United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7305

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 76-7305

B

JAMES ARNEIL, VERNON A. STOCKWELL

Plaintiffs-Appellants

-against-

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC. THE NEW YORK STOCK EXCHANGE,

Defendants-Appellees.

On Appeal from the United States District Court
Southern District of New York

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FILED
AUG 30 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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I N D E X

DOCUMENT	PAGE
Docket Entries	1
Summons dated April 11, 1975	4
Complaint for Violations of the Securities Laws of The United States - Demand for Jury Trial	5
Answer of New York Stock Exchange, Inc.	31
Answer of Defendants James B. Ramsey, Jr., Oliver Deg. Vanderbilt and William M. Lendman	38
Notice of Motion of Individual Defendants for Summary Judgment and Exhibits	45
Statement of New York Stock Exchange of Material Facts as to which there is no Genuine Issue	186
Notice of Motion of New York Stock Exchange for Summary Judgment	194
Affidavit of Robert M. Bishop In Support of Motion of New York Stock Exchange and Exhibits	196
Affidavit of J. Thomas Hannan In Opposition to Summary Judgment	406
Statement of Material Facts as to which there is Genuine Dispute	408
Plaintiffs' Exhibits in Opposition to Motions for Summary Judgment	413
Memorandum and Order of District Judge J. Brieant	514
Notice of Appeal dated June 18, 1976	541

DOCUMENT	PAGE
Index to Record on Appeal----------	542
Notice to Docket Clerk regarding Certification and Transmittal of Record----------	544

DIST/OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE NO.	DAY	YEAR	J	M/S	O	R	23	S	NOS	DEM.	
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PLAINTIFFS

[illegible]EL, JAMES.,
STOCKWELL, VERNON A.

DEFENDANTS

[illegible], JAMES E.,[illegible]
[illegible], OLIVER [illegible]
[illegible], WILLIAM M.,
BLAIR & CO., INC.,
THE NEW YORK STOCK EXCHANGE

CAUSE

Securities Exchange Act of 1934.

ATTORNEYS

SPENGLER CARLSON GUBAR & CHURCHILL
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New York, N.Y. 10017
Murray Hill 2-4444

Milbank Tweed Hadley & McCloy
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422-2660 (Deft N.Y. Stock Exchan[illegible]

Milgrim Thomajan & Jacobs
25 B'way NYC 10004 952-9292
(Defts Ramsey, Vanderbilt & Lendm[illegible]

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FILING FEES PAID			STATISTICAL C-
DATE	RECEIPT NUMBER	C.O. NUMBER	CARD / DATE
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UNITED STATES DISTRICT COURT DOCKET

...IL, JAMES Vs. RAMSEY, JAMES B. JR. ET

75 Civ 3716

DATE	NR.	PROCEEDINGS
[illegible]-75	1	Filed Complt and Issued Summons.
10-10-75	2	Filed Deft's New York Stock Exchange, Inc., Answer to Complt.
7-16-75	3	Filed deft (N.Y. Stock Ex.) request for production of documents.
7-16-75	4	Filed deft (N.Y. Stock Ex.) notice to take depositions of pltffs.
8-19-75	5	Filed pltffs response to defts request for production of documents.
8-20-75	6	Filed pltffs affdvt & notice of motion for a protective order adjourning to 11-10-75 noticed depositions.
8-20-75	7	Filed pltffs memo in support of motion for a protective order adjourning their depostions.
9-3-75	8	Filed Deft. NY Stock Exc's Affdvt by E. J. Reilly in opposition to pltffs' motion for Protective Order.
9-3-75	9	Filed Deft. NY Stock Exc's Memo. in opposition to motion for protective order.
9-4-75	10	Filed Memo-End on back of motion fld 8-20-75.....The within motion has been disposed of in accordance with the directions of the Court made at the hearing this date . See Transcript. So Ordered.....Brieant,J. mn
9-8-75	11	Filed Order appointing person to serve Summons & Complt.....Clerk
9-16-75	12	Filed Summons with Marshal's Return. Served: O. DeG. Vanderbilt by. Anne McNicholas on 9-10-75. James B. Ramsey Jr. " Not Served.
9-18-75	13	Filed Summons with Personal Serve Upon: James B. Ramsey Jr. on 9-8-75 WM Dilger " " " " O. DeG. Vanderbilt (served by U.S. Marshal) upon A. McNicholas on 9-10-75. Wm M. lendman 9-10-75.
10-24-75		Filed ANSWER to complt by defts (Ramsey, Oliver, Vanderbilt & Lendman
10-29-75		Filed pltffs notice to take deposition of deft James B. Ramsey.
10-29-75		Filed pltffs notice to take deposition of deft Wm. M. Lendman.
10-29-75		Filed pltffs notice to take deposition of deft Oliver DeG Vanderbilt.
12-16-75		Filed Deft. NY Stock Exc's Notice of Motion for an order pur. to Rule 56(b) dismissing complt.(summ Judg.)....ret 1-12-76 at 9:30Am Rm 2704.
12-16-75		Filed Deft. NY Stock Exc's Memo of Law in support of its motion for summ judg.
12-16-75		Filed Deft. NY Stock Exc's Statement of Material facts....
12-18-75		Filed Defts. Ramsey, Vanderbilt & Lendman's Notice of Motion for an order for summ Judg. returnable ret. 1-12-76 at 9:30Am .
12-18-75		Filed Defts' Memo of Law in support of their motion for summ judg.
1-6-76		Fild Pltffs' Memo of Points and Auth. in opposition to defts' motions for summ judg.
1-6-76		Fld Statement of Material facts as which there is genuine dispute....by pltffs.

Continue on page 3

DATE	PROCEEDINGS
1-12-76	Fld Reply Memo of Deft NY Stock Exc. in support of motion for summ judg.
1-12-76	Fld " " in support of motion of defts Ramsey, Vanderbilt & Lendman for summ judg.
1-9-76	Fld Deposition of deft. James B. Ramsey taken on 11-4-75
1-9-76	Fld " " " William H. Lendman " " 11-5-75
1-9-76	Fld " " " O. D.G. Vanderbilt " " 11-3-75.
1-14-76	Fld Deposition of Vernon A. Stockwell taken on 10-29-75.
1-14-76	Fld " " James Arnsil " " 10- -28-75 at 11:50AM
1-14-76	Fld " " " " " " 10-29-76 at 10:10AM
3-V-76	Filed transcript of record of proceedings, dated 1-12-76
5-13-76	Fld Memorandum &Order...Levet... Conclusion: As to the motion of the individual defts for summ judgment, which is granted in all respects, there is no just cause fro delay, and a final judgment may be settled on notice....The Exchange's motion is granted iwth respect to Cts 1, 11, 111, 17, VI, IX, X, XII, XIII and XIV only, and is in all other respects denied....So Ordered....Brieant, J. mn
6-1-76	Fld Order & Judgment as to certain defts and claims only....Ordered that the Court heveing expressly determined, pur to Rule 54(b) of the FRCP, that there is no just reason for delay in entering final judgmentin favor of defts Ramsey, Vanderbilt and Lendman and deft NY Stock Exc., as set forth abbve, final judgment shall be entered dismissing the complt herein in its entirety as against defts Ramsey, Vanderbilt and Lendman with prej and with costs to them and dismissing only Cts. 1,11,111, 1V, VI 1X,X,XIII, and XIV of the complt. as against deft NY Stock Exc. with prej....Brieant,J. mn Judgment Entered....Clerk-6-2-76.
6-23-76	Fld Pltffs Notice of Appeal to USCA from order partial Summ judg...mn to Milgram Thomajan & Jacobs and Milbank, Tweed, Hadley & McCloy on 6-23-76.
7-21-76	Fld Bill of Costs ; Judgment - 76,690.23 taxed in the amount of $932.23 , in favor of defts Ramsey, Vanderbilt & Lendman as against all pltff's & added to the judgment .No appearance in opposition.....J.Sm

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SUMMONS IN A CIVIL ACTION

CIV. 3 (2-61)
(Formerly E.C. Form No. 65a Rev. (6-49))

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

JUDGE ERIENT

75 CIV. 1783

CIVIL ACTION FILE NO. _____

JAMES ARNEIL; VERNON A. STOCKWELL,

Plaintiffs

v.

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE,

Defendants

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon

Spengler Carlson Gubar & Churchill

plaintiff's attorneys, whose address

280 Park Avenue, New York, New York 10017

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT

Clerk of Court.

Deputy Clerk.

Date: APR 11 1975

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

4

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES ARNEIL; VERNON A. STOCKWELL, Plaintiffs, v. JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE, Defendants.	COMPLAINT FOR VIOLATIONS OF THE SECURITIES LAWS OF THE UNITED STATES DEMAND FOR JURY TRIAL

Plaintiffs for their complaint by their attorneys allege:

JURISDICTION AND VENUE

1. Jurisdiction is conferred on this Court by Section 27 of the Securities and Exchange Act of 1934 ("The Exchange Act") 15 U.S.C. §78aa.

2. James B. Ramsey, Jr. ("Ramsey") was during part of the time relevant herein the President of Blair & Co., Inc.

3. William M. Lendman ("Lendman") was during part of the time relevant herein the President of Blair & Co., Inc.

4. Oliver DeG. Vanderbilt ("Vanderbilt") was at all times relevant herein the chairman of the Board of Directors of Blair & Co., Inc.

5. Blair & Co. Inc. ("Blair") wat at times relevant herein a Deleware corporation with its principal place of business in New York City within the State and Southern District of New York.

6. The New York Stock Exchange ("N.Y.S.E.") is a corporation incorporated under the New York not-for-profit corporations law with its principal place of business in New York City, within the State and Sourthern District of New York.

7. James Arneil ("Arneil") is an individual who with-

in the six (6) years immediately passed purchased securities of Blair.

8. Vernon A. Stockwell ("Stockwell") is an individual who within the six (6) years immediately past purchased securities of Blair.

HISTORY AND BACKGROUND OF BLAIR & CO., INC.

9. Blair was a Delaware corporation incorporated in 1947 as the successor to a prior business. Blair was a long time member of defendant N.Y.S.E. and other stock exchanges and was engaged in the stock brokerage and underwriting business.

10. In or about 1967 Blair commenced an expansion program which continued through its acquisition of Schwabacher & Co., a California partnership ("Schwabacher"), in or about March of 1969.

11. On or about September 13, 1968, defendant N.Y.S.E. conducted a cost consultation with Blair. A report of the consultation dated September 17, 1968, disclosed the N.Y.S.E. considered analysis of income per employee to be important. The report disclosed, as a result of expansion, Blair ranked 24th and last in their group of firms in gross income per employee and general partner at that time.

13. In or about August, 1968, the N.Y.S.E. was informed that Blair was considering the acquisition of the Miami Beach and Palm Beach, Florida offices of A.L. Stamm & Co. The Assistant Director of the Department of Member Firms of the N.Y.S.E. thereupon reported to the Director of the Department of Member Firms that he did not believe that Blair could handle the Stamm acquisition and that he was not convinced the N.Y.S.E. should permit it.

14. In or about September, 1968, Blair, with the approval of the N.Y.S.E., acquired the Miami Beach and Palm Beach, Florida offices of A.L. Stamm & Co. and in or about November, 1968, Blair acquired the Worcester, Massachusetts office of Hayden Stone,

Inc. with the approval of the N.Y.S.E.

HISTORY AND BACKGROUND OF SCHWABACHER & CO.

15. Schwabacher , was a California partnership engaged in the securities brokerage business, which had been a member organization of the N.Y.S.E. since about March 1, 1930. By 1968, they conducted a diversified securities business from their main office in San Francisco, California and 15 branch offices.

16. In or about January 1966, Schwabacher converted its bookkeeping operations to an outside service known as the Midwest Service Bureau. In or about April 1966 it was reported to the N.Y.S.E. that the conversion was not proceeding smoothly and in or about October 1966, as the result of an audit, the N.Y.S.E. learned that short security differences were almost $14,000,000 indicating a substantial failure to keep accurate records.

17. The N.Y.S.E. pursuant to its rules required the filing by Schwabacher of answers to a regular financial questionnaire as of October 28, 1966. The answers were not received by the N.Y.S.E. until about March 3, 1967, 93 days following the original due date. When received, the answers showed short securities differences amounting to more than $2,300,000 and the securities not properly segregated amounting to more than $6,800,000.

18. In or about September of 1967 a N.Y.S.E. Examiner reviewed Schwabacher's records and submitted a 65-page report of record keeping deficiencies which was then the longest report ever produced as the result of an Examiner's visit. The report dealt with out-of-balance conditions, errors in submitting financial questionnaires, commingling of partner and customer securities in the firm's safekeeping box, excessive "edits" representing errors of input to the Midwest system, inadequate attention to customers' unsecured debits and short positions, inordinate delays in COD deliveries, inordinate delays in payment of customers,

7

laxity in transfer in cases of sales of non-negotiable securities, security count differences, under-segregation in margin accounts, failure to segregate fully paid-for securities in cash accounts, deficiences in accomplishing shipping instructions, delays in margin department release of transfer instructions and cage processing of transfer instructions and segregation instructions, unauthorized release of segregated securities, lack of control of excessive fails, unreconciled clearing house accounts and brokers accounts, a breakdown in new accounts procedures resulting in loss of control and commingling of customers securities without consent in bank loans, commingling of partners securities with customers in bank loans, unreconciled suspense accounts, and the loss of dividend department control.

19. Commencing in or about February, 1968, defendant N.Y.S.E. imposed restrictions on Schwabacher including the prohibition against the hiring of new registered representatives, reduction of volume of business, prohibitions against new underwriting committments, prohibitions against the expansion of its business and prohibition against advertising.

20. In or about March, 1968, the N.Y.S.E. received a report from Schwabacher's independent auditors stating that an examination of Schwabacher's financial condition as of October 27, 1967 had been completed but that there remained many unresolved money and security position differences so that it was not possible to determine with reasonable accuracy the effect corrections would have upon Schwabacher's capital.

21. In or about November of 1968, in another examination, the N.Y.S.E. found approximately 31,000 "edits" indicating serious record-keeping errors which needed correction; more than $7,500,000 of unreconciled trades; monthly figures showing failure to deliver or receive securities traded as reported to the Exchange were inaccurate by as much as $6,000,000 or $7,000,000;

dividend conditions on customer securities could not be determined; control had been lost over a major bank account, and that 10 suspense accounts of the [redacted] office were out of control.

22. Answers to financial questionnaire based upon an audit by Schwabacher's independent auditors as of August 30, 1968 submitted to the N.Y.S.E. about November 20, 1968, indicated Schwabacher's records were in even worse condition. Schwabacher had earlier submitted an operations questionnaire as of August 30 1968, the audit date, showing unreconcilled long and short security differences amounting to more than $4,800,000 and $2,900,000, respectively. The auditors financial questionnaire as of the same date showed the market value of these differences to be more than $7,700,000 long and $7,100,000 short. The auditors stated in their report that differences to a considerable extent were the result of the unsatisfactory condition of the accounting records and material inadequacies in the internal accounting controls.

23. On several occasions during 1966, 1967 and 1968 Schwabacher had short security differences which, if charged as they should have been against their net capital, would have resulted in violations of the N.Y.S.E.'s net capital rule intended to be enforced for the protection of investors.

THE ACQUISITION OF SCHWABACHER BY BLAIR

24. Approximately 2 years prior to the merger in March of 1969, exploratory merger discussions had taken place but had broken off and were not resumed until sometime in 1968.

25. In November or early December of 1968, a decision was made by the N.Y.S.E. that Schwabacher must merge with another firm or sell a number of branch offices.

26. Schwabacher was informed by letter of December 3, 1968 that it must inform the N.Y.S.E. by December 15, 1968 whether it would merge or sell a number of branch offices and that Schwabacher must have an audit by an independent public accountant and

prepare answers to a financial questionnaire no later than December 31, 1968. The audit and financial questionnaire requirements were not met.

27. Blair and the individual defendants, Vanderbilt, Lendman & Ramsey had access to the records of Schwabacher and were or should have been aware of the facts set forth above concerning the status of the records of Schwabacher and the inability of Schwabacher to provide audited financial information.

28. On or about December 13, 1968, it was publicly announced that Schwabacher would merge with Blair.

29. Subsequent to December 13, 1968 and prior to March 1, 1969, defendant N.Y.S.E. reviewed and approved a plan for merger between Schwabacher and Blair. This approval was given despite the existence of inadequate records, unreconciled securities differences, commingling securities and insufficient information from which to determine with accuracy, the capital position and net capital position of Schwabacher; and thus the unavailability of adequate information from which to determine with accuracy the capital position and net capital position of the combined firms.

30. Schwabacher had been in continuous violation of N.Y.S.E. rules relating to audits and financial reporting since 1966. One effect of allowing the merger as was known or should have been known to all defendants was to place Blair in violation of these same rules as to the Schwabacher division of Blair.

31. Schwabacher had also been in violation of the N.Y.S.E. rules relating to the keeping of books and records, supervision, control and maintenance of good business practices. Another effect of allowing the merger as was known or should have been known to all defendants was to place Blair in violation of the same rules with respect to the Schwabacher division of Blair.

32. On or about March 1, 1969, the merger of Schwabacher into Blair became effective.

33. At or about the date of the merger, Blair & Co. was under investigation by the N.Y.S.E. for a prior net capital violation.

34. An advertisement run by Blair in a national publication at or about the time of the merger, which advertisement was subject to the rules of the N.Y.S.E. concerning standards for advertisement and approvals of advertisements, stated in part:

"On January 31st, we issued a year-end report pointing out the remarkable differences between our organization in 1963 and Blair & Co., Inc. as it exists today. We believe that some of these comparisons are particularly appropriate to highlight the importance to the investing community of the new Blair & Co. as we expand today into a coast-to-coast investment banking and stockbrokerage complex with the addition of the offices, facilities, business and--most important--the people of the well-known San Francisco-based firm of "Schwabacher & Co., which now becomes the Western Division of Blair & Co.

* Since 1964, our volume of business has increased 500%

. . .

* At the end of 1964, we had 365 employees. Today, we have more than 1,000, and with the Schwabacher staff we will have more than 1,800.
* In 1968, the dollar volume of securities distributions managed or co-managed by Blair & Co. increased by some 500% over 1964 total. With the addition of Schwabacher's investment management team, and their familiarity with corporate finance, we expect these statistics to show even greater growth.
* We had 16 offices in 1964. Yesterday we had 31. Today we have 47 offices to serve individual, institutional and corporate investors from Honolulu to Boston.

//

Of course our merger with Schwabacher does more than just expand our statistics. It adds important services and capabilities. . . .

In short, we believe we have made a giant step forward in our program of qualitative growth. We offer you more, approved, facilities and services--and the staff to implement them.

For all of these reasons, we think that stock in Blair & Co. would be an excellent "growth" investment...if it were available to the public. It isn't, regrettably, although a growing number of our employees have exercised their privilege to become Blair & Co. stockholders. . . ." (emphasis partially added)

THE SALE OF SECURITIES TO PLAINTIFFS AND SUBSEQUENT OCCURRENCES

35. A substantial part of the net capital of Blair, the remaining company after the merger, was short-term, temporary debt capital which imperiled the stability of the firm's financial and net capital positions. Accordingly, in connection with the acquisition of Schwabacher by Blair, persons inside Blair, including, but not limited to Vanderbilt, Lendman and Ramsey ("the insiders") whose capital was then at risk concluded it was advisable that additional capital be obtained by Blair from and after March 1, 1969. One effect of doing so, as all defendants were aware, was to facilitate removal of risk capital by insiders.

36. To obtain the desired additional capital, it was decided by Blair and the insiders with the knowledge and approval of defendant N.Y.S.E. that securities of Blair be sold to outside investors.

37. In and after the first quarter of 1969 a plan or plans for the obtaining of subordinated capital through the sale of securities were submitted to defendant N.Y.S.E. and approved by said defendant. Said plans included the sales of securities for which registration was required, pursuant to The Securities

Act of 1933 and the Exchange Act; however, no provision was made in said plans for the registration of said securities or the disclosure of material facts concerning the records and financial condition of Schwabacher and the records and financial condition of Schwabacher on Blair which a reasonable investor might have considered important.

38. In addition, no provision was made in said plan for the disclosure of risk factors which would be required by a registration statement or required even in the absence of registration.

39. Commencing in early 1969, pursuant to the aforesaid scheme and plan to obtain capital from outsiders, plaintiffs were solicited to purchase securities of Blair. It was represented to plaintiffs that an investment in Blair was a safe and excellent investment, that Blair would likely go public with a resulting profit to plaintiffs and that plaintiffs would be eligible for special private placement issues, warrants and spin offs. Plaintiffs were further informed that in order to be eligible to purchase common and preferred shares of Blair they must place subordinated capital into Blair through a contribution of cash or marketable securities in exchange for secured demand notes from which notes they could also expect a profitable return.

40. At no time prior to purchase was disclosure made to plaintiffs of risk factors involved in the purchase of the securities of Blair, including but not limited to the following material information a reasonable investor might have considered important in making his decision:

(a) financial information concerning the Schwabacher division of Blair and thus the overall financial position of Blair;

(b) the chaotic conditions of the records of the Schwabacher division of Blair and thus of Blair itself;

(c) the status of subordinated capital of insiders and other investors;

(d) prior and continuing serious violations of the Exchange Act and the rules of the Securities and Exchange Commission issued thereunder by Schwabacher and Blair; and

(e) prior and continuing serious violations of the consititution and rules of the N.Y.S.E. by Schwabacher and Blair.

41. Plaintiffs on or about April 15, 1969 executed documents provided by Blair in connection with the aforesaid transaction.

42. According to the terms of the documents executed by plaintiffs, they could not complete their purchase until approved as purchasers of Blair securities by the N.Y.S.E. as the sale and ownership of securities in Blair and other members was regulated by the N.Y.S.E.

43. Included among documents returned to Blair on or about April 16 were N.Y.S.E. long form Allied Member or Non-Member applications, N.Y.S.E. Financial Supplements to their applications and Stockholders Agreements with Exchanges. The date of plaintiffs' approval by the N.Y.S.E. and thus purchase of securities of Blair is not known but is believed to be in or subsequent to June, 1969.

44. The agreement with plaintiffs and each aspect thereof constitutes a security or securities within the meaning of §3(10) of the Exchange Act, 15 U.S.C. §78c(a)(10)

THE N.Y.S.E.'S FAILURE TO ENFORCE THE EXCHANGE ACT, ITS CONSTITUTION AND RULES

45. The N.Y.S.E.'s Constitution and Rules ("rules") are intended to protect investors and benefit the public, including plaintiffs. The making of rules carries with it the obligation to enforce the rules and to maintain an adequate staff and

46. On or about February 17, 1969, just prior to the merger, the Department of Member Firms of the N.Y.S.E. privately reported to the Board of Governors of the N.Y.S.E. concerning charges and admissions of violations by Schwabacher and its General Partners of Rule 440 and Securities and Exchange Commission Rule 17a-3 (books and records), Rule 402 and Securities and Exchange Commission Rule 8c-1 (hypothecation of customer securities), Rule 342 (supervision and control), Rule 401 (good business practice) and Rule 417.11 (audits). In the same document, the Department of Member firms charged Schwabacher and its partners with violations of Rules 440, 402, 342, 401 and 417.11, and Securities and Exchange Commission Rules 17a-3 and 8c-1. In addition, Albert E. Schwabacher, Jr., was separately charged with a violation of Rule 342 and all were alleged to be subject to discipline under Sections 6, 7, 10 and 16 of Article XIV of the N.Y.S.E. Constitution.

47. The N.Y.S.E. failed to meet its obligation to plaintiffs with respect to the following rules, among others, N.Y.S.E. Constitution Articles XIV §§ 6, 7, 10 and 16; N.Y.S.E. Rules 313, 325, 342, 401, 402, 417, 419, 440 and 471.

48. The N.Y.S.E. failed to meet its obligation to plaintiffs to prevent violations of sections 8(c), 10(b) and 17(a) of the Exchange Act and the rules of the Securities and Exchange Commission issued thereunder.

EVENTS SUBSEQUENT TO PLAINTIFFS' PURCHASE OF BLAIR SECURITIES

49. It had not been possible for a long period prior to the merger to obtain audited, reliable financial information about the condition of Schwabacher & Co. nor was it possible to obtain audited, reliable information concerning the financial condition of the Schwabacher Division of Blair and thus the over-

all position of Blair subsequent to the merger at least until well into 1970, if at all.

50. At the time of and subsequent to the merger, the N.Y.S.E. failed to enforce its rules and regulations and the Exchange Act by excusing preparation and distribution of a required statement of financial condition and permitting the audit of Blair as two separate divisions at two separate times for 1969. Blair failed to comply with the N.Y.S.E. rules and the Exchange Act. In fact, it was not possible to audit the Schwabacher division of Blair because of the disasterous state of the records. The independent auditors' report stated:

"The Board of Directors

Blair & Co.

The accompanying statement of financial condition of Blair & Co., Inc. at September 26, 1969 represents a combination of the respective statements of financial condition of its two divisions, Blair, formerly its only operations, and Schwabacher, acquired during the year. . . .

as explained in Note 1, the scope of our examination was restricted to the books and records of Blair Division and did not include a determination as to whether or not there were financial transactions recorded in the books and records of Schwabacher Division which affected its Blair Division. . . .

The statement of financial condition of Schwabacher Division at September 26, 1969 (not shown separately) was prepared by the Company. Inasmuch as we did not make an examination of it in accordance with generally accepted auditing standards nor of any of its financial transactions since June 27, 1969 (referred to below), we express no opinion

"thereon. We did examine a statement of financial condition (as set forth in its Answers to Financial Questionnaire) of the Schwabacher Division at June 27, 1969 and reported thereon under date of August 15, 1969. That examination was made on the same basis and our opinion was qualified with respect to the same matters as described above for the Blair Division.

Inasmuch as we did not make an examination in accordance with generally accepted auditing standards at a single date for both Blair Division and Schwabacher Division, whose individual statements of condition are combined in the accompanying statement of financial condition of Blair & Co., Inc. at September 26, 1969, as explained above, we were unable to express an opinion thereon.

It is our opinion, however, that the combined statement has been properly compiled."

51. On or about August 28, 1969, Securities and Exchange Commission Release No. SEA 8677 was publicly issued accepting an offer of settlement wherein Schwabacher and Albert E. Schwabacher, Jr. admitted willful violations of the record-keeping, reporting and hypothecation provisions of the Exchange Act (§§8(c) and 17 (a); Rules 8c-1(a)(2), 17a-3 and 17a-5).

52. The 1969 figures supplied by Blair to the Securities and Exchange Commission on the report required by Rule X-17A-5 indicated that it had no reserves to cover in excess of $2,000,000 in short differences.

53. Commencing in January of 1970 Blair began to cut back its operation and investigate various merger possibilities.

54. On or about August 14, 1970 defendant N.Y.S.E. named five firms (including Blair) who were in serious peril and on or about September 28, 1970 a liquidator was named to wind up the business of Blair.

55. On or about September 30, 1970 a petition was filed in the United States District Court asking that Blair be placed in involuntary bankruptcy and that a receiver be appointed leading to the eventual liquidation of Blair for the benefit of creditors and in a fashion which returned none of the consideration paid by plaintiffs for their securities. Thereafter, the liquidation of Blair has continued and does now continue with defendant N.Y.S.E.'s Special Trust Fund as the current liquidator.

COUNT I

VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT OF 1934, 15 U.S.C. §78(j)(b) AND RULE 10b-5 PROMULGATED THEREUNDER 17 C.F.R. 240.10b-5 AGAINST ALL DEFENDANTS

56. The allegations of paragraphs 1 through 55 are realleged and incorporated by reference herein.

57. Plaintiffs were required to apply for approval and were approved by defendant N.Y.S.E. in order to purchase the securities of Blair.

58. Defendant N.Y.S.E., by its acts, induced and encouraged plaintiffs to purchase the securities of Blair.

59. Defendants Vanderbilt, Landman and Ramsey participated in the planning and effectuation of the scheme and plan to obtain capital for Blair by the sale of securities to outsiders including plaintiffs without registration of the securities or disclosure of material information.

60. By use of the means and instrumentalities of interstate commerce (transportation and communication) and the United States Mails, in connection with the purchase and sale of securities, defendants and each of them have:

(a) employed devices, schemes and artifices to defraud;

(b) omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices, and a course of ness which operated as a fraud and deceit upon plaintiffs. As a result thereof, defendants thereby violated Section 10(b) of The Exchange Act and the Regulations issued by the Securities and Exchange Commission pursuant to that Section.

61. As a result thereof plaintiffs and the class have been damaged in the amount of the highest value of their investment in the securities of Blair.

62. Wherefore plaintiffs pray judgment as hereinafter set forth.

COUNT II

AIDING AND ABETTING, A VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER AGAINST DEFENDANTS VANDERBILT, LENDMAN, RAMSEY AND N.Y.S.E.

63. The allegations of paragraphs 1 through 55 and 59 are realleged and incorporated by reference herein.

64. Blair sold its securities without registration and without disclosures of material facts in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

65. Defendants Vanderbilt, Lendman, Ramsey and N.Y.S.E. as set forth hereinabove aided and abetted Blair in the sale of its securities in violation of Section 10(b) and Rule 10b-5 promulgated thereunder.

66. As a result of defendants' conduct as above stated in violation of Section 10(b) of the Exchange Act and of the Regulations of the Securities and Exchange Commission issued pursuant to said Section, plaintiffs have been damaged in the amount of their investment in the securities of Blair.

67. Wherefore plaintiffs pray judgment as hereinafter set forth.

COUNT III

CONSPIRACY TO VIOLATE SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER AGAINST DEFENDANTS VANDERBILT, LENDMAN, RAMSEY AND N.Y.S.E.

68. The allegations of paragraphs 1 through 55 and 59 are realleged and incorporated by reference herein.

69. As set forth hereinabove defendants Vanderbilt, Lendman, Ramsey and N.Y.S.E. conspired and agreed with Blair and its officers and directors and Schwabacher and its officers and directors to obtain additional capital for Blair through the issuance of securities which were issued without registration and adequate disclosure of material facts.

70. As a result of defendants' conduct as above stated in violation of Section 10(b) of The Exchange Act and of the Regulations of the Securities and Exchange Commission issued pursuant to said Section, plaintiffs have been damaged in the amount of of the highest value their investments in the securities of Blair.

71. Wherefore plaintiffs pray judgment as hereinafter set forth.

COUNT IV

VIOLATION OF SECTION 20(a) OF THE EXCHANGE ACT 15 U.S.C. §78(t)(a) AGAINST DEFENDANTS VANDERBILT, LENDMAN, RAMSEY AND N.Y.S.E.

72. The allegations of paragraphs 1 through 55 and 59 are realleged and incorporated by reference herein.

73. With respect to the activities of Blair and Schwabacher above described, defendants Vanderbilt, Lendman, Ramsey and N.Y.S.E. were control persons within the meaning of Section 20(a) of The Exchange Act in that the N.Y.S.E. supervised the activities of Schwabacher and Blair and their officers and directors and Vanderbilt, Lendman and Ramsey supervised the activities of Blair,

including its Schwabacher division.

74. As control persons said defendants were under a duty to plaintiffs in connection with the sale of the securities of of Blair.

75. Defendants breached said duty and are therefore liable to plaintiffs pursuant to the terms of Section 20(a) of the Exchange Act.

76. As a result of defendants' conduct as above stated in violation of Section 20(a) of The Exchange Act, plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

77. Wherefore plaintiffs pray judgment as hereinafter set forth.

COUNT V

VIOLATION OF SECTION 6(a)(1) OF THE EXCHANGE ACT, 15 U.S.C. §78(f)(a)(1) AGAINST DEFENDANT N.Y.S.E.

78. The allegations of paragraphs 1 through 55 are realleged and incorporated herein by reference.

79. Pursuant to Section 6(a)(1) of the Exchange Act, the N.Y.S.E. was contractually bound to agree and did agree with the Securities and Exchange Commission to comply with and to enforce so far as within its powers compliance by its members with revision of the Exchange Act and the rules and regulations made thereunder by the Securities and Exchange Commission.

80. Pursuant to the aforesaid contractual responsibility the N.Y.S.E., under certain circumstances required investors in its members to sign and submit a document known as a "knowledgeability letter" in which the investor acknowledged specific risk factors in connection with investment in the member, acknowledged the conduct of an independent investigation into the business of the member including its financial condition and net capital position and disclaimed reliance upon the N.Y.S.E. in making any investment in

a member. Knowledgeability letters were required where there were material risk factors relating to a member known to the N.Y.S.E.

81. Despite material risk factors known to the N.Y.S.E. concerning investment in Blair, the N.Y.S.E. breached its duty to plaintiffs and the class by not requiring knowledgeability letters or otherwise causing disclosure of material risk factors to be made to them.

82. As a result thereof plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

83. Wherefore plaintiffs pray judgment as hereinafter set forth.

COUNT VI

VIOLATION OF SECTION 6(a)(2)-(4) OF THE EXCHANGE ACT 15 U.S.C. §78(f)(a)(2)-(4) AGAINST DEFENDANT N.Y.S.E.

84. The allegations of paragraphs 1 through 55 are realleged and incorporated by reference herein.

85. Pursuant to Section 6(a)(2) of The Exchange Act, the N.Y.S.E. became contractually obligated to submit and did submit to the Securities and Exchange Commission such data concerning its organization, rules of procedure and membership as were necessary or appropriate in the public interest and for the protection of investors.

86. Pursuant to Section 6(a)(3) and 6(a)(4) the N.Y.S.E. became contractually obligated to file and did file with the Securities and Exchange Commission copies of its constitution, articles of incorporation, bylaws or rules or instruments corresponding thereto ("rules of the Exchange") and to furnish to the Securities and Exchange Commission copies of any amendments to the rules of the Exchange forthwith upon their adoption.

87. The sale of unregistered securities of Blair without provision for disclosure of material risk factors through a

knowledgeability letter or otherwise constitutes a violation of various rules of the Exchange submitted to the Securities and Exchange Commission in accordance with the procedures set forth.

88. The N.Y.S.E. breached its duty to plaintiffs by failing to enforce the rules of the Exchange to prevent the sale of unregistered securities of Blair or in the alternative to provide for adequate disclosure of material risk factors through a knowlegeability letter or otherwise.

89. As a result thereof plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

90. Wherefore plaintiffs judgment as hereinafter set forth.

COUNT VII

VIOLATION OF SECTION 6(b) OF THE EXCHANGE ACT

15 U.S.C. §78(f)(b) AGAINST DEFENDANT N.Y.S.E.

91. The allegations of paragraphs 1 through 55 are realleged and incorporated by reference herein.

92. Pursuant to Section 6(b) of the Exchange Act, the N.Y.S.E. was contractually obligated to provide in the rules of the Exchange for the expulsion, suspension or disciplining of a member for conduct or proceeding inconsistent with just and equitable principles of trade and to declare that the willful violation of any provisions of the Exchange Act or any rule or regulation thereunder shall be considered conduct or proceeding inconsistent with just and equitable principles of trade.

93. The rules of the N.Y.S.E. contain the required contractual provisions set forth in paragraph 92 above.

94. The willful sale of unregistered securities of Blair without disclosure of material risk factors through a knowledgeability letter or otherwise constitutes a violation of Section 6(b) of the Exchange Act.

95. The N.Y.S.E. failed to expel, suspend or discipline Blair prior to commission of the willful violation of the Exchange Act and instead approved Blair's plan which violated the Exchange Act.

96. As a result thereof, plaintiffs have been damaged in the amount of the highest value of their investment in the securities of Blair.

97. Wherefore palintiffs pray judgment as hereinafter set forth.

COUNT VIII

VIOLATION OF SECTION 6(a)(1) OF THE EXCHANGE ACT
15 U.S.C. §78(f)(a)(1) AGAINST DEFENDANT N.Y.S.E.

98. The allegations of paragraphs 1 through 55, and 79 are incorporated herein by reference.

99. Pursuant to paragraph 79 above, the N.Y.S.E. was contractually obligated to prevent records keeping violations, financial reporting violations, failures to adhere to principals of good business practice in the conduct of business affairs and net capital violations by members including Schwabacher and Blair.

100. Despite its obligation, the N.Y.S.E. permitted the continued operation of Schwabacher & Co. under the afore-described circumstances and approved the merger of Schwabacher & Co. into Blair and the sale of securities to plaintiffs, all in violation of the N.Y.S.E.'s contractual responsibility under Section 6(a)(1).

101. As a result thereof plaintiffs have been damaged in the amount of the highest value of their investment in the securities of Blair.

102. Wherefore, plaintiffs pray judgment as hereinafter set forth.

COUNT IX

VIOLATION OF SECTION 6(a)(2)-(4) OF THE EXCHANGE ACT
15 U.S.C. §78(f)(a)(2)-(4) AGAINST DEFENDANT N.Y.S.E.

103. The allegations of paragraphs 1 through 55, 85 and 86 are realleged and incorporated by reference herein.

104. The N.Y.S.E. was contractually bound to enforce it rules for the benefit of investors and the public, including plaintiffs.

105. Had the N.Y.S.E. enforced its rules regarding audits and financial reporting with respect to Schwabacher and Blair, there would have been public disclosure of the disastrous condition of Schwabacher and subsequently the Schwabacher division of Blair and Blair itself. The N.Y.S.E. elected instead to cover-up and supress the damaging material information and to knowingly permit and specifically approve sale of securities to plaintiffs.

106. As a result thereof, plaintiffs have been damaged in the amount of the highest value of their investment in the securities of Blaif.

107. Wherefore, plaintiffs pray judgment as hereinafter set forth.

COUNT X

VIOLATION OF SECTION 6(a)(2)-(4) OF THE EXCHANGE ACT 15 U.S.C. §78(a)(2)-(4) AGAINST DEFENDANT N.Y.S.E.

108. The allegations of paragraphs 1 through 55, 84, 85 and 86 are realleged and incorporated by reference herein.

109. The N.Y.S.E. breached its contractual duty to plaintiffs by failing to enforce the rules of the Exchange to prevent continued operation of Schwabacher and the merger of Schwabacher into Blair.

110. As a result thereof, plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

111. Wherefore, plaintiffs pray judgment as hereinafter set forth.

COUNT XI

VIOLATION OF SECTION 6(b) OF THE EXCHANGE ACT

15 U.S.C. §78(f)(b) AGAINST DEFENDANT N.Y.S.E.

112. The allegations of paragraphs 1 through 55, 92 and 93 are realleged and incorporated by reference herein.

113. The N.Y.S.E. breached its duty to plaintiffs by failing to prevent a willful violation of the Exchange Act in permitting the continued operation of Schwabacher and the merger of Schwabacher into Blair, the failure to impose timely discipline and the cover-up and supression of material information concerning violation of the Rules of the Exchange and of the Exchange Act.

114. As a result thereof, plaintiffs have been damaged in the amount of the highest value of their investment in the securities of Blair.

115. Wherefore, plaintiffs and the class pray judgment as hereinafter set forth.

COUNT XII

VIOLATION OF SECTION 6(a) OF THE EXCHANGE ACT

15 U.S.C. §78(f)(a) AGAINST DEFENDANT N.Y.S.E.

116. The allegations of paragraphs 1 through 55 and 85 through 88 are realleged and incorporated by reference herein.

117. Plaintiffs maintain herein that the rules and regulations of the N.Y.S.E. effective early in 1969 and at the time of their purchases prohibited the sale of unregistered securities in members by members or the sale of securities without disclosure of material risk factors.

118. The sale of securities without registration or disclosure of material risk factors constituted a violation of the Exchange Act.

119. Subsequent to the date of the sales of securities involved herein, the N.Y.S.E. enacted Rule 313(d) precisely providing for registration of members securities under the securities

Act of 1933 and for disclosure of material risk factors. Rule 313 provides in pertinent part:

"Whenever a member organization shall offer or sell any security, as defined under the Securities Act of 1933, as amended, or the General Rules and Regulations thereunder (the 1933 Act) . . . which security is issued by the member "organization for the purpose of raising net capital under Rule 325 of the Board of Governors of the Exchange, the member organization must furnish the Exchange with an opinion of counsel in form and substance satisfactory to the Exchange as to whether or not the securities being offered or sold need be registered under the 1933 Act . . . If, in counsel's opinion, the securities need not be registered under the 1933 Act, his opinion shall state the exemption from the registration requirements of the 1933 Act upon which he is relying and the basis for such reliance. If the securities are required to be registered under the 1933 Act, counsel's opinion shall include, in addition to such other statements as the Exchange in any particular case may require, a statement substantially to the effect . . . nothing has come to counsel's attention that would lead counsel to believe that the registration statement at the time it became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the prospectus at the time the registration statement became effective or at the time of sale of the security contained an untrue statement of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

. . .

Without limiting the generality of the foregoing, counsel,

"among other things, is expected to give appropriate consideration to (a) any other transactions pursuant to which the member organization has raised net capital in the past, or expects to do so in the future, (b) the disclosure of material information regarding the member organization to offerees of the security, and (c) the need for representation by the purchaser of the securities as to his intention to hold the securities for investment." (emphasis added)

120. In the event the court should find that the sale of securities without registration or disclosure of material risk factors does not constitute a violation of the rules of the Exchange, as they existed at the time relevant herein, the N.Y.S.E has breached its contractual obligation to enact a rule prohibiting the aforesaid foreseeable and clear violation of the Exchange Act.

121. As a result of the breach of the N.Y.S.E.'s contractual obligation to make rules to prevent violations of the Exchange Act by its members, plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

122. Wherefore, plaintiffs pray judgment as hereinafter set forth.

COUNT XIII

COMMON LAW FRAUD AGAINST ALL DEFENDANTS

123. The allegations of paragraphs 1 through 55 are realleged and incorporated by reference herein.

124. Defendants, and each of them, made representations of material fact to plaintiffs regarding investment in Blair.

125. Defendants made representations of material fact which were false and defendants further deliberately and actively suppressed from plaintiffs material adverse information concerning the securities of Blair.

126. Defendants and each of them knew material repre-

sentations made to plaintiffs to be false and knowingly suppressed other material facts.

127. The affirmative misrepresentations were made to plaintiffs and material adverse information was suppressed with the intent of inducing them to purchase securities of Blair.

128. Plaintiffs relied upon the aforesaid affirmative misrepresentations.

129. Plaintiffs acted in justifiable reliance upon defendants misrepresentations and without knowledge of the suppressed material adverse information.

130. Plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

131. Plaintiffs are further entitled to the award of punitive damages for fraud against defendants and each of them.

132. Wherefore, plaintiffs pray judgment as hereinafter set forth.

COUNT XIV

BREACH OF FIDUCIARY OBLIGATION AGAINST DEFENDANT N.Y.S.E.

133. The allegations of paragraphs 1 through 55 are realleged and incorporated by reference herein.

134. The N.Y.S.E. holds itself out to the public as a self-regulatory body whose objects include the maintainance of high standards of commercial honor and integrity among members and the promotion and inculcation of just and equitable principles of trade and business.

135. By reason of the matters alleged hereinabove, the N.Y.S.E. was in a fiduciary relationship to plaintiffs. Plaintiffs were thereby induced to display and did display full trust and confidence in the N.Y.S.E. with respect to its approval of the sale of securities of Blair to plaintiffs. Throughout the periods that defendant N.Y.S.E. Occupied such a position of trust and confidence, plaintiffs were entitled to a high degree of care

and concern. In addition, defendant N.Y.S.E. had a duty not to prefer or favor its own interests or the interests of its members over the interests of plaintiffs and it was obligated to exercise its supervision, direction and control of the sale of securities of Blair to plaintiffs in a manner consistent with high standards of commercial honor and intergrity and in accordance with just and equitable principals of trade and business.

136. By its conduct as hereinabove alleged, defendant N.Y.S.E. violated its fiduciary duties and obligations to plaintiffs and as a result thereof, plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

137. Plaintiffs are further entitled to the award of punitive damages against defendant N.Y.S.E. for breach of its fiduciary obligations to plaintiffs.

WHEREFORE, plaintiffs pray judgment as follows:

1. That defendants and each of them be found liable to plaintiffs in the amount of the highest value of their investment in the securities of Blair & Co.;

2. For costs of suit herein incurred;

3. For punitive damages as determined by the trier of fact;

4. For such other and further relief as is deemed just and equitable.

Dated: _____

SPRENGLER, CARLSON, GUBAR & CHURCHILL
280 Park Avenue
New York, New York 10017
Telephone: (212) 682-4444

J. THOMAS HANNAN
LOVITT, HANNAN & HENNIGAN, INC.
Agriculture Building
Embarcadero at Mission
San Francisco, California 94105
Telephone: (415) 362-8769

By _____
J. THOMAS HANNAN

A JURY TRIAL IS DEMANDED ON ALL COUNTS OF THIS COMPLAINT

_____
J. THOMAS HANNAN

467

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

JAMES ARNEIL and VERNON A. STOCKWELL, :

Plaintiffs, : 75 Civ. 1766 C.L.B.

- against - :

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC. and THE NEW YORK STOCK EXCHANGE, : ANSWER OF DEFENDANT NEW YORK STOCK EXCHANGE, INC.

Defendants. :

- x

Defendant New York Stock Exchange, Inc. (the "Exchange") by its attorneys, Milbank, Tweed, Hadley & McCloy, for answer to the complaint:

1. Denies the allegations in paragraph 1 except admits that jurisdiction is alleged under the statute referred to.

2. Denies the allegations in paragraphs 7 and 8 except admits that plaintiffs purchased securities of Blair on or about April 15, 1969.

3. Denies the allegations in paragraph 9 except admits that Blair was a Delaware corporation and a member of the Exchange and other stock exchanges and was engaged in the stock brokerage and underwriting business.

4. Denies the alleg tions in paragraph 10 except admits that Blair acquired certain assets and assumed certain liabilities of Schwabacher, a California partnership, on February 28, 1969.

5. Denies the allegations in paragraph 11 except admits that the Exchange conducted a cost consultation with Blair on or about September 13, 1968, prepared a report of that

consultation dated September 17, 1968, and refers to that report for a complete statement of its contents.

6. Denies the allegations in paragraph 13 except admits that the Exchange was informed that Blair was considering the acquisition of the domestic branch offices of A.L. Stamm & Co., that a report dated August 1, 1968 was prepared by the Exchange concerning this possible acquisition, that an assistant director of the Exchange's Department of Member Firms prepared a memorandum to the Director of the Department of Member Firms concerning this report, and refers to that memorandum for a complete statement of its contents.

7. Denies the allegations in paragraph 16 except admits that Schwabacher converted its bookkeeping operations to the Midwest Service Bureau in January 1966, and refers to the reports received by the Exchange for a complete statement of their contents.

8. Admits the allegations in paragraphs 17 and 18 except refers to Schwabacher's answers to the regular financial questionnaire as of October 28, 1966 and the report of the Exchange examiner for a complete statement of their contents.

9. Denies the allegations in paragraph 20 except admits that the Exchange received a copy of the auditor's report on March 20, 1968, and refers to that report for a complete statement of its contents.

10. Denies the allegations in paragraph 21 and refers to the report of the Exchange examiner's visit in November 1968 for a complete statement of its contents.

11. Denies the allegations in paragraph 22 and refers to the operations questionnaire, the answers to a financial

questionnaire and the auditor's report for a complete statement of their contents.

12. Denies the allegations in paragraph 23 except admits that on several occasions during 1966, 1967 and 1968 Schwabacher had short security differences which, if charged against their net capital, would have resulted in violation of the Exchange's net capital rule and as a consequence of which the Exchange required Schwabacher to raise substantial excess net capital.

13. Denies the allegations in paragraph 24 except admits that merger discussions between Blair and Schwabacher commenced in 1966.

14. Denies the allegations in paragraphs 25 and 26 except admits that in November 1968 the Exchange deferred until December 15, 1968 a restriction calling for two reductions of 10% each in the volume of Schwabacher's business, that thereafter Schwabacher agreed to inform the Exchange by December 15 whether it had decided to merge with another firm or sell a number of branch offices, and that the Exchange sent a letter dated December 3, 1968 to Schwabacher and refers to that letter for a complete statement of its contents.

15. Denies the allegations in paragraph 27 except admits that the defendants referred to had access to the records of Schwabacher.

16. Denies the allegations in paragraph 29 except admits that the Exchange reviewed a purchase and escrow agreement dated as of February 17, 1969 between Blair, Schwabacher and Schwabacher's general partners, limited partners and subordinated lenders and that the Exchange did not object to the acquisition of Schwabacher by Blair.

17. Denies the allegations in paragraphs 30 and 31 except admits that Schwabacher violated certain Exchange rules relating to recordkeeping, audits, supervision and control and business practices, and that restrictions imposed to aid in correcting such violations continued in force against the Schwabacher division of Blair.

18. Denies the allegations in paragraphs 32 and 33 except admits that Blair acquired certain assets and assumed certain liabilities of Schwabacher on February 28, 1969 at which time Blair was under investigation by the Exchange as to its compliance with the net capital rule as of May 31, 1968.

19. Denies the allegations in paragraph 34 except admits that Blair published an advertisement at or about the time it acquired Schwabacher, and refers to the advertisement and the rules of the Exchange concerning advertisements for a complete statement of their contents.

20. Denies the allegations in paragraphs 35, 36, 37 and 38.

21. Denies the allegations in paragraphs 39 and 40 except denies knowledge or information sufficient to form a belief as to the truth of allegations concerning representations made to plaintiffs.

22. Denies the allegations in paragraphs 41, 42 and 43 except admits that the Exchange received documents entitled Allied Member or Non-Member Application (long form), Financial Supplement and Stockholders Agreement with Exchanges which, together with other documents, had been executed by plaintiffs on or about April 15, 1969, and refers to those documents for a complete statement of their contents.

23. Denies the allegations in paragraph 44.

24. Denies the allegations in paragraph 45 except admits that certain provisions of the Exchange's Constitution and Rules are intended to protect customers of member organizations.

25. Denies the allegations in paragraph 46 except admits that the Department of Member Firms prepared and submitted to the Board of Governors a memorandum dated February 17, 1969 concerning Schwabacher and its general partners and refers to that memorandum for a complete statement of its contents.

26. Denies the allegations in paragraphs 47 and 48.

27. Denies the allegations in paragraphs 49 and 50 and refers to the independent auditor's report for a complete statement of its contents.

28. Denies the allegations in paragraphs 51 and 52 except admits that on August 28, 1969 the Securities and Exchange Commission publicly issued Exchange Act Release No. 8677 and refers to that release and to Blair's report pursuant to Rule X-17A-5 for a complete statement of their contents.

29. Denies the allegations in paragraph 53.

30. Denies the allegations in paragraph 54 except admits that on August 13, 1970 the Exchange named five firms (including Blair) which had terminated their public business during the previous several months and admits that a liquidator was appointed for Blair on September 25, 1970.

31. Denies the allegations in paragraph 55 except admits that an involuntary petition in bankruptcy was filed against Blair on or about September 29, 1970 and refers to that petition for a complete statement of its contents, and admits that Blair's liquidation has continued.

32. Denies the allegations in paragraph 57 except admits that the Exchange approved plaintiffs as purchasers of securities of Blair and refers to the rules of the Exchange for a complete statement of the requirements for approval of persons who purchase securities of member organizations.

33. Denies the allegations in paragraphs 58, 59, 60, 61, 64, 65, 66, 69, 70, 73, 74, 75 and 76.

34. Denies the allegations in paragraph 79 except admits that the Exchange has filed the agreement required by Section 6(a)(1) and refers to the agreement for a complete statement of its contents.

35. Denies the allegations in paragraphs 80, 81 and 82.

36. Denies the allegations in paragraphs 85 and 86 except admits the Exchange filed with the Securities and Exchange Commission the data required by Sections 6(a)(2) and 6(a)(3) and has filed the agreement required by Section 6(a)(4).

37. Denies the allegations in paragraphs 87, 88, 89, 92, 93, 94, 95, 96, 99, 100, 101, 104, 105, 106, 109, 110, 113, 114, 117 and 118.

38. Denies the allegations in paragraph 119 except admits that the Exchange amended Rule 313 in 1971 and refers to that amendment for a complete statement of its contents.

39. Denies the allegations in paragraphs120 and 121.

40. Denies the allegations in paragraphs 124, 125, 126 and 127 insofar as they relate to the Exchange and denies knowledge or information sufficient to form a belief as to the truth thereof insofar as they relate to other defendants.

41. Denies the allegations in paragraphs 128, 129, 130 and 131.

42. Denies the allegations in paragraph 134 except admits that the Exchange is a self-regulatory body and refers to Article I, Section 2, its Constitution for a complete statement of its objects and purposes.

43. Denies the allegations in paragraph 135, 136 and 137.

First Defense

44. Each of the claims asserted in the complaint is barred by the applicable statute of limitations.

Second Defense

45. Counts V, VI, VII, VIII, IX, X and XII fail to state a claim upon which relief can be granted.

Third Defense

46. Plaintiffs lack standing to assert the claims based on Section 6 of the Securities Exchange Act of 1934.

Dated: New York, N.Y.
July 9, 1975

MILBANK, TWEED, HADLEY & McCLOY

By Edward J. Reilly
(A Member of the Firm)
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant
New York Stock Exchange, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES ARNEIL, VERNON A. STOCKWELL, Plaintiffs,	:	75 Civ. 1766 (CLB)
-against-	:	ANSWER OF DEFENDANTS JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT AND WILLIAM M. LENDMAN
JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE, Defendants.	:	

Defendants James B. Ramsey, Jr. ("Ramsey"), Oliver DeG. Vanderbilt ("Vanderbilt") and William M. Lendman ("Lendman") by their attorneys, Milgrim Thomajan & Jacobs Professional Corporation, for their answer to the complaint:

1. Deny the allegations contained in paragraph 1 except admit that jurisdiction is alleged under the statute referred to.

2. Deny the allegations contained in paragraphs 7 and 8.

3. Deny the allegations contained in paragraph 10 except admit that Blair acquired certain assets and assumed certain liabilities of Schwabacher, a California partnership, on February 28, 1969.

4. Deny the allegations contained in paragraph 11 except admit that the New York Stock Exchange ("Exchange") conducted a cost consultation with Blair on or about September 13, 1968, prepared a report of that consultation dated September 17, 1968, and refer to that report for its contents.

5. Deny the allegations contained in paragraph 13 except admit that Blair was considering the acquisition of the domestic branch offices of A.L. Stamm & Co.

6. Deny the allegations contained in paragraph 16 except admit that at some point in time prior to 1968 Schwabacher converted its bookkeeping operations to the Midwest Service Bureau.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 17, 18, 20 and 21.

8. Deny the allegations contained in paragraph 22.

9. Deny the allegations contained in paragraph 23 except admit that on several occasions during 1966, 1967 and 1968 Schwabacher had short security differences.

10. Deny the allegations contained in paragraph 24.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 25 and 26.

12. Deny the allegations contained in paragraph 27.

13. Deny the allegations contained in paragraph 29 except admit that Blair submitted a purchase and escrow agreement dated as of February 17, 1969 between Blair, Schwabacher and Schwabacher's general partners, limited partners and subordinated lenders to the Exchange and that Blair was advised that the Exchange did not object to the consummation of such agreements.

14. Deny the allegations contained in paragraphs 30 and 31 except admit that Schwabacher had violated certain Exchange rules relating to recordkeeping, audits, supervision and control and business practices, and that certain restrictions imposed by the Exchange contained in force against the Schwabacher division of Blair.

15. Deny the allegations contained in paragraphs 32 and 33 except admit that Blair acquired certain assets and assumed certain liabilities of Schwabacher on February 28, 1969 at which time Blair was being examined by the Exchange as to its compliance with the Net Capital Rule as of May 31, 1968.

16. Deny the allegations contained in paragraph 34 except admit that Blair published an advertisement at or about the time it acquired Schwabacher, and refers to the advertisement and the rules of the Exchange concerning advertisements for a complete statement of their contents.

17. Deny the allegations contained in paragraphs 25, 36, 37, 38 and 39.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 40 and 41.

19. Deny the allegations contained in paragraphs 42 and 43 and refers to those documents for a statement of their contents.

20. Deny the allegations contained in paragraph 44.

21. Deny the allegations contained in paragraph 45 except admit that certain provisions of the Exchange's Constitution and Rules are intended to protect customers of member organizations.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 46, 47 and 48.

23. Deny the allegations contained in paragraphs 49 and 50 and refers to the independent auditor's report for a complete statement of its contents.

24. Deny the allegations contained in paragraphs 51 and 52 except admit that on August 28, 1969 the Securities and Exchange Commission publicly issued Exchange Act Release No. 8677 and refers to that release and to Blair's report pursuant to Rule X-17A-5 for a complete statement of their contents.

25. Deny the allegations contained in paragraph 53.

26. Deny the allegations contained in paragraph 54 except admit that on August 13, 1970 the Exchange named five firms (including Blair) which had terminated their public business and admit that a liquidator was appointed for Blair on September 25, 1970.

27. Deny the allegations contained in paragraph 55 except admit that an involuntary petition in bankruptcy was filed against Blair on or about September 29, 1970.

28. Make the same answer to paragraph 56 as they did to the allegations therein incorporated.

29. Deny the allegations contained in paragraph 57 except admit that the Exchange approved plaintiffs as purchasers of securities of Blair and refers to the rules of the Exchange for a complete statement of the requirements for approval of persons who purchase securities of member organizations.

30. Deny the allegations contained in paragraphs 58, 59, 60 and 61.

31. Make the same answer to paragraph 63 as they did to the allegations therein incorporated.

32. Deny the allegations contained in paragraphs 64, 65 and 66.

33. Make the same answer to paragraph 68 as they did to the allegations therein incorporated.

34. Deny the allegations contained in paragraph 69 and 70.

35. Make the same answer to paragraph 72 as they did to the allegations therein incorporated.

36. Deny the allegations contained in paragraphs 73, 74, 75 and 76.

37. Make no response to the allegations contained in paragraphs 78 to and including 122 and 133 to and including 137 as no claim for relief is asserted therein as against the answering defendants.

38. Make the same answer to paragraph 123 as they did to the allegations therein incorporated.

39. Deny the allegations contained in paragraphs 124, 125, 126, 127, 128, 129, 130 and 131.

First Defense

Each of the claims asserted in the complaint is barred by the applicable statute of limitations.

Second Defense

Counts I, II, III, IV and XII fail to state a claim upon which relief can be granted.

WHEREFORE defendants Ramsey, Vanderbilt and Lendman demand judgment dismissing the Complaint together with the costs and disbursements of this action.

Dated: New York, New York
October 21, 1975

MILGRIM THOMAJAN & JACOBS
Professional Corporation

By _____
A Member of the Firm
25 Broadway
New York, New York 10004
Tel.: (212) 952-9491
Attorneys for Defendants
Ramsey, Vanderbilt and Lendman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

JAMES ARNEIL, VERNON A. STOCKWELL, :

Plaintiffs, : 75 Civ. 1766 (CLB)

-against- : NOTICE OF MOTION

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE, :

Defendants. :

- x

S I R S :

PLEASE TAKE NOTICE, that upon the Summons and Complaint, Rule 9(g) Statement, Exhibits and Memorandum of Law annexed hereto, defendants James B. Ramsey, Jr., Oliver DeG. Vanderbilt and William M. Lendman will move this Court before the Honorable Charles L. Brieant, Jr., a Judge of this Court, in such Courtroom as he shall then be presiding, at United States Court House, Foley Square, New York, New York, on January 12, 1976 at 9:30 A.M. or as soon thereafter as counsel can be heard, for summary judgment in favor of said defendants on the ground that all claims for relief purportedly asserted in the Complaint are barred by the three-year statute of limitations of the State of Washington.

Dated: New York, New York
December 16, 1975

Yours, etc.

MILGRIM THOMAJAN & JACOBS
Professional Corporation

By _____
Robert Thomajan
Attorneys for Defendants
Ramsey, Vanderbilt and Lendman
26 Broadway
New York, New York 10004
Tel.: (212) 952-9292

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

JAMES ARNELL, VERNON A. STOCKWELL, :

Plaintiffs, : 75 Civ. 1766 (CLB)

-against- :

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE, :

Defendants. :

- x

STATEMENT OF DEFENDANTS VANDERBILT, RAMSEY AND LENDMAN PURSUANT TO GENERAL RULE 9(g), AS TO FACTS NOT IN DISPUTE

Defendants James B. Ramsey ("Ramsey"), Oliver DeG. Vanderbilt ("Vanderbilt") and William M. Lendman ("Lendman") have moved for summary judgment pursuant to Rule 56(b) of the Federal Rules of Civil Procedure.

In accordance with Rule 9(g) of the General Rules of this Court, we respectfully submit the following statement of material facts as to which it is contended that there is no genuine issue to be tried:

1. Plaintiffs are, and have continuously been since 1969, residents of the State of Washington.

2. Prior to, and since 1969, plaintiffs have each maintained securities accounts and have regularly engaged in the purchase and sale of securities.

3. In 1969, plaintiffs each had a net worth in excess of $1,000,000 and each earned in excess of $100,000 annually.

4. Mr. Arneil was, in 1969, and is at present, a practicing attorney.

5. Mr. Stockwell was, in 1969, and is at present, the general manager and half owner of two orchards.

6. Neither of the plaintiffs ever spoke to Messrs. Ramsey, Vanderbilt or Lendman in connection with the transaction in suit.

7. All of the conversations with respect to the transaction in suit were had by telephone to or from plaintiffs' offices or residences in Washington.

8. All written communications were addressed to and received by plaintiffs at their offices or residences in Washington and all written communications to Blair were mailed by plaintiffs from Washington.

9. Plaintiffs executed the agreements in connection with the transaction in suit in the State of Washington and mailed them to defendant Blair on April 16, 1969.

10. Plaintiffs paid for their purchase of the Blair stock with funds drawn by them on their Washington bank accounts.

11. In 1970, plaintiffs received, among other things, the following:

1. A letter from Blair to its stockholders advising that a substantial amount of senior capital was badly needed on a long-term basis and that the stock of Blair had no book value.

2. A letter from Blair advising that over $11,000,000 of subordinated accounts were converted to cash in April of 1970 to provide working capital.

3. A letter from Blair which stated that Blair was not in capital compliance with the New York Stock Exchange rules and that operating restrictions had been imposed upon Blair.

4. A letter from Blair advising that plaintiffs' subordinated accounts were to be converted to cash in connection with a New York Stock Exchange ordered sale or closing of all Blair's branch offices.

12. On July 23, 1970 plaintiffs wrote to Blair in connection with their purchase of Blair stock and their subordinated accounts and stated, among other things, that proper disclosure of the affairs of Blair & Co. had not been made to plaintiffs and that the extreme critical nature of Blair's problems were not known to plaintiffs until that time.

13. On or about August 21, 1970 a lawyer engaged by plaintiffs attended a meeting of Blair's subordinated lenders, which meeting had been called by Mr. John P. Foley, Jr.

14. On or about September 25, 1970 plaintiffs were advised by Blair, in writing, that a liquidator had been appointed for Blair.

15. On September 29, 1970 an Involuntary Petition in Bankruptcy was filed against Blair in the United States District Court for the Southern District of New York.

158 571

16. This action was commenced by the filing of a Summons and Complaint on April 11, 1975.

MILGRIM THOMAJAN & JACOBS
Professional Corporation

By Robert Thomajan
A Member of the Firm
Attorneys for Defendants
Ramsey, Vanderbilt and
Lendman
25 Broadway
New York, New York 10004
Tel.: (212) 952-9491

SUMMONS IN A CIVIL ACTION — Formerly D.C. — CIV. 1 (2-64) Modified Rev. (5-69)

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

JUDGE BRIEANT

75 CIV. 1763

CIVIL ACTION FILE NO. _____

JAMES ARNEIL; VERNON A. STOCKWELL,

ATT 221-8

Plaintiffs

v.

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE,

Defendants

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon

Spengler Carlson Gubar & Churchill

plaintiff's attorneys, whose address

280 Park Avenue, New York, New York 10017

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT

Clerk of Court.

Deputy Clerk.

Date: APR 11 1975

[Seal of Court]

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RETURN ON SERVICE OF WRIT

I hereby certify this return, that on the day of 19 ,

I received this summons and served it together with the complaint herein as follows:

MARSHAL'S FEES

Travel ____ $ _____

Service ____ _____

_____
United States Marshal.

By _____
Deputy United States Marshal.

Subscribed and sworn to before me, a this

day of , 19 .

[SEAL]

_____

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. _____

United States District Court
FOR THE

v.

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

_____
Attorney for Plaintiff

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES ARNEIL; VERNON A. STOCKWELL, Plaintiffs, v. JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE, Defendants.	COMPLAINT FOR VIOLATIONS OF THE SECURITIES LAWS OF THE UNITED STATES DEMAND FOR JURY TRIAL

Plaintiffs for their complaint by their attorneys allege:

JURISDICTION AND VENUE

1. Jurisdiction is conferred on this Court by Section 27 of the Securities and Exchange Act of 1934 ("The Exchange Act") 15 U.S.C. §78aa.

2. James B. Ramsey, Jr. ("Ramsey") was during part of the time relevant herein the President of Blair & Co., Inc.

3. William M. Lendman ("Lendman") was during part of the time relevant herein the President of Blair & Co., Inc.

4. Oliver DeG. Vanderbilt ("Vanderbilt") was at all times relevant herein the chairman of the Board of Directors of Blair & Co., Inc.

5. Blair & Co. Inc. ("Blair") wat at times relevant herein a Deleware corporation with its principal place of business in New York City within the State and Southern District of New York.

6. The New York Stock Exchange ("N.Y.S.E.") is a corporation incorporated under the New York not-for-profit corporations law with its principal place of business in New York City, within the State and Sourthern District of New York.

7. James Arneil ("Arneil") is an individual who with-

in the six (6) years immediately passed purchased securities of Blair.

8. Vernon A. Stockwell ("Stockwell") is an individual who within the six (6) years immediately past purchased securities of Blair.

HISTORY AND BACKGROUND OF BLAIR & CO., INC.

9. Blair was a Delaware corporation incorporated in 1947 as the successor to a prior business. Blair was a long time member of defendant N.Y.S.E. and other stock exchanges and was engaged in the stock brokerage and underwriting business.

10. In or about 1967 Blair commenced an expansion program which continued through its acquisition of Schwabacher & Co., a California partnership ("Schwabacher"), in or about March of 1969.

11. On or about September 13, 1968, defendant N.Y.S.E. conducted a cost consultation with Blair. A report of the consultation dated September 17, 1968, disclosed the N.Y.S.E. considered analysis of income per employee to be important. The report disclosed, as a result of expansion, Blair ranked 24th and last in their group of firms in gross income per employee and general partner at that time.

13. In or about August, 1968, the N.Y.S.E. was informed that Blair was considering the acquisition of the Miami Beach and Palm Beach, Florida offices of A.L. Stamm & Co. The Assistant Director of the Department of Member Firms of the N.Y.S.E. thereupon reported to the Director of the Department of Member Firms that he did not believe that Blair could handle the Stamm acquisition and that he was not convinced the N.Y.S.E. should permit it.

14. In or about September, 1968, Blair, with the approval of the N.Y.S.E., acquired the Miami Beach and Palm Beach, Florida offices of A.L. Stamm & Co. and in or about November, 1968, Blair acquired the Worcester, Massachusetts office of Hayden Stone,

Inc. with the approval of the N.Y.S.E.

HISTORY AND BACKGROUND OF SCHWABACHER & CO.

15. Schwabacher , was a California partnership engaged in the securities brokerage business, which had been a member organization of the N.Y.S.E. since about March 1, 1930. By 1968, they conducted a diversified securities business from their main office in San Francisco, California and 15 branch offices.

16. In or about January 1966, Schwabacher converted its bookkeeping operations to an outside service known as the Midwest Service Bureau. In or about April 1966 it was reported to the N.Y.S.E. that the conversion was not proceeding smoothly and in or about October 1966, as the result of an audit, the N.Y.S.E. learned that short security differences were almost $14,000,000 indicating a substantial failure to keep accurate records.

17. The N.Y.S.E. pursuant to its rules required the filing by Schwabacher of answers to a regular financial questionnaire as of October 28, 1966. The answers were not received by the N.Y.S.E. until about March 3, 1967, 93 days following the original due date. When received, the answers showed short securities differences amounting to more than $2,300,000 and the securities not properly segregated amounting to more than $6,800,000.

18. In or about September of 1967 a N.Y.S.E. Examiner reviewed Schwabacher's records and submitted a 65-page report of record keeping deficiencies which was then the longest report ever produced as the result of an Examiner's visit. The report dealt with out-of-balance conditions, errors in submitting financial questionnaires, commingling of partner and customer securities in the firm's safekeeping box, excessive "edits" representing errors of input to the Midwest system, inadequate attention to customers' unsecured debits and short positions, inordinate delays in COD deliveries, inordinate delays in payment of customers,

laxity in transfer in cases of sales of non-negotiable securities, security cc differences, under-segregation in margin accounts, failure to segregate fully paid-for securities in cash accounts, deficiences in accomplishing shipping instructions, delays in margin department release of transfer instructions and cage processing of transfer instructions and segregation instructions, unauthorized release of segregated securities, lack of control of excessive fails, unreconciled clearing house accounts and brokers accounts, a breakdown in new accounts procedures resulting in loss of control and commingling of customers securities without consent in bank loans, commingling of partners securities with customers in bank loans, unreconciled suspense accounts, and the loss of dividend department control.

19. Commencing in or about February, 1968, defendant N.Y.S.E. imposed restrictions on Schwabacher including the prohibition against the hiring of new registered representatives, reduction of volume of business, prohibitions against new underwriting committments, prohibitions against the expansion of its business and prohibition against advertising.

20. In or about March, 1968, the N.Y.S.E. received a report from Schwabacher's independent auditors stating that an examination of Schwabacher's financial condition as of October 27, 1967 had been completed but that there remained many unresolved money and security position differences so that it was not possible to determine with reasonable accuracy the effect corrections would have upon Schwabacher's capital.

21. In or about November of 1968, in another examination, the N.Y.S.E. found approximately 31,000 "edits" indicating serious record-keeping errors which needed correction; more than $7,500,000 of unreconciled trades; monthly figures showing failure to deliver or receive securities traded as reported to the Exchange were inaccurate by as much as $6,000,000 or $7,000,000;

dividend conditions on customer securities could not be determined; control had been lost over a major bank account, and that 10 suspense accounts of the New York office were out of control.

22. Answers to a financial questionnaire based upon an audit by Schwabacher's independent auditors as of August 30, 1968 submitted to the N.Y.S.E. about November 20, 1968, indicated Schwabacher's records were in even worse condition. Schwabacher had earlier submitted an operations questionnaire as of August 30 1968, the audit date, showing unreconciled long and short security differences amounting to more than $4,800,000 and $2,900,000, respectively. The auditors financial questionnaire as of the same date showed the market value of these differences to be more than $7,700,000 long and $7,100,000 short. The auditors stated in their report that differences to a considerable extent were the result of the unsatisfactory condition of the accounting records and material inadequacies in the internal accounting controls.

23. On several occasions during 1966, 1967 and 1968 Schwabacher had short security differences which, if charged as they should have been against their net capital, would have resulted in violations of the N.Y.S.E.'s net capital rule intended to be enforced for the protection of investors.

THE ACQUISITION OF SCHWABACHER BY BLAIR

24. Approximately 2 years prior to the merger in March of 1969, exploratory merger discussions had taken place but had broken off and were not resumed until sometime in 1968.

25. In November or early December of 1968, a decision was made by the N.Y.S.E. that Schwabacher must merge with another firm or sell a number of branch offices.

26. Schwabacher was informed by letter of December 3, 1968 that it must inform the N.Y.S.E. by December 15, 1968 whether it would merge or sell a number of branch offices and that Schwabacher must have an audit by an independent public accountant and

prepare answers to a financial questionnaire no later than December 31, 1968. The audit and financial questionnaire requirements were not met.

27. Blair and the individual defendants, Vanderbilt, Lendman & Ramsey had access to the records of Schwabacher and were or should have been aware of the facts set forth above concerning the status of the records of Schwabacher and the inability of Schwabacher to provide audited financial information.

28. On or about December 13, 1968, it was publicly announced that Schwabacher would merge with Blair.

29. Subsequent to December 13, 1968 and prior to March 1, 1969, defendant N.Y.S.E. reviewed and approved a plan for merger between Schwabacher and Blair. This approval was given despite the existence of inadequate records, unreconciled securities differences, commingling securities and insufficient information from which to determine with accuracy, the capital position and net capital position of Schwabacher; and thus the unavailability of adequate information from which to determine with accuracy the capital position and net capital position of the combined firms.

30. Schwabacher had been in continuous violation of N.Y.S.E. rules relating to audits and financial reporting since 1966. One effect of allowing the merger as was known or should have been known to all defendants was to place Blair in violation of these same rules as to the Schwabacher division of Blair.

31. Schwabacher had also been in violation of the N.Y.S.E. rules relating to the keeping of books and records, supervision, control and maintenance of good business practices. Another effect of allowing the merger as was known or should have been known to all defendants was to place Blair in violation of the same rules with respect to the Schwabacher division of Blair.

32. On or about March 1, 1969, the merger of Schwabacher into Blair became effective.

33. At or about the date of the merger, Blair & Co. was under investigation by the N.Y.S.E. for a prior net capital violation.

34. An advertisement run by Blair in a national publication at or about the time of the merger, which advertisement was subject to the rules of the N.Y.S.E. concerning standards for advertisement and approvals of advertisements, stated in part:

"On January 31st, we issued a year-end report pointing out the remarkable differences between our organization in 1963 and Blair & Co., Inc. as it exists today. We believe that some of these comparisons are particularly appropriate to highlight the importance to the investing community of the new Blair & Co. as we expand today into a coast-to-coast investment banking and stockbrokerage complex with the addition of the offices, facilities, business and--most important--the people of the well-known San Francisco-based firm of "Schwabacher & Co., which now becomes the Western Division of Blair & Co.

* Since 1964, our volume of business has increased 500% . . .
* At the end of 1964, we had 365 employees. Today, we have more than 1,000, and with the Schwabacher staff we will have more than 1,800.
* In 1968, the dollar volume of securities distributions managed or co-managed by Blair & Co. increased by some 500% over 1964 total. With the addition of Schwabacher's investment management team, and their familiarity with corporate finance, we expect these statistics to show even greater growth.
* We had 16 offices in 1964. Yesterday we had 31. Today we have 47 offices to serve individual, institutional and corporate investors from Honolulu to Boston.

Of course our merger with Schwabacher does more than just expand our statistics. It adds important services and capabilities. . . .

In short, we believe we have made a giant step forward in our program of qualitative growth. We offer you more, approved, facilities and services--and the staff to implement them.

For all of these reasons, we think that stock in Blair & Co. would be an excellent "growth" investment...if it were available to the public. It isn't, regrettably, although a growing number of our employees have exercised their privilege to become Blair & Co. stockholders. . . ." (emphasis partially added)

SALE OF SECURITIES TO PLAINTIFFS AND SUBSEQUENT OCCURRENCES

35. A substantial part of the net capital of Blair, the remaining company after the merger, was short-term, temporary debt capital which imperiled the stability of the firm's financial and net capital positions. Accordingly, in connection with the acquisition of Schwabacher by Blair, persons inside Blair, including, but not limited to Vanderbilt, Lendman and Ramsey ("the insiders") whose capital was then at risk concluded it was advisable that additional capital be obtained by Blair from and after March 1, 1969. One effect of doing so, as all defendants were aware, was to facilitate removal of risk capital by insiders.

36. To obtain the desired additional capital, it was decided by Blair and the insiders with the knowledge and approval of defendant N.Y.S.E. that securities of Blair be sold to outside investors.

37. In and after the first quarter of 1969 a plan or plans for the obtaining of subordinated capital through the sale of securities were submitted to defendant N.Y.S.E. and approved by said defendant. Said plans included the sales of securities for which registration was required, pursuant to The Securities

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Act of 1933 and the Exchange Act; however, no provision was made in said plans for the registration of said securities or the disclosure of material facts concerning the records and financial condition of Schwabacher and the records and financial condition of Schwabacher on Blair which a reasonable investor might have considered important.

38. In addition, no provision was made in said plan for the disclosure of risk factors which would be required by a registration statement or required even in the absence of registration.

39. Commencing in early 1969, pursuant to the aforesaid scheme and plan to obtain capital from outsiders, plaintiffs were solicited to purchase securities of Blair. It was represented to plaintiffs that an investment in Blair was a safe and excellent investment, that Blair would likely go public with a resulting profit to plaintiffs and that plaintiffs would be eligible for special private placement issues, warrants and spin offs. Plaintiffs were further informed that in order to be eligible to purchase common and preferred shares of Blair they must place subordinated capital into Blair through a contribution of cash or marketable securities in exchange for secured demand notes from which notes they could also expect a profitable return.

40. At no time prior to purchase was disclosure made to plaintiffs of risk factors involved in the purchase of the securities of Blair, including but not limited to the following material information a reasonable investor might have considered important in making his decision:

(a) financial information concerning the Schwabacher division of Blair and thus the overall financial position of Blair;

(b) the chaotic conditions of the records of the Schwabacher division of Blair and thus of Blair itself;

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(c) the status of subordinated capital of insiders and other investors;

(d) prior and continuing serious violations of the Exchange Act and the rules of the Securities and Exchange Commission issued thereunder by Schwabacher and Blair; and

(e) prior and continuing serious violations of the consititution and rules of the N.Y.S.E. by Schwabacher and Blair.

41. Plaintiffs on or about April 15, 1969 executed documents provided by Blair in connection with the aforesaid transaction.

42. According to the terms of the documents executed by plaintiffs, they could not complete their purchase until approved as purchasers of Blair securities by the N.Y.S.E. as the sale and ownership of securities in Blair and other members was regulated by the N.Y.S.E.

43. Included among documents returned to Blair on or about April 16 were N.Y.S.E. long form Allied Member or Non-Member applications, N.Y.S.E. Financial Supplements to their applications and Stockholders Agreements with Exchanges. The date of plaintiffs' approval by the N.Y.S.E. and thus purchase of securities of Blair is not known but is believed to be in or subsequent to June, 1969.

44. The agreement with plaintiffs and each aspect thereof constitutes a security or securities within the meaning of §3(10) of the Exchange Act, 15 U.S.C. §78c(a)(10)

THE N.Y.S.E.'S FAILURE TO ENFORCE THE EXCHANGE ACT, ITS CONSTITUTION AND RULES

45. The N.Y.S.E.'s Constitution and Rules ("rules") are intended to protect investors and benefit the public, including plaintiffs. The making of rules carries with it the obligation to enforce the rules and to maintain an adequate staff and

46. On or about February 17, 1969, just prior to the merger, the Department of Member Firms of the N.Y.S.E. privately reported to the Board of Governors of the N.Y.S.E. concerning charges and admissions of violations by Schwabacher and its General Partners of Rule 440 and Securities and Exchange Commission Rule 17a-3 (books and records), Rule 402 and Securities and Exchange Commission Rule 8c-1 (hypothecation of customer securities), Rule 342 (supervision and control), Rule 401 (good business practice) and Rule 417.11 (audits). In the same document, the Department of Member firms charged Schwabacher and its partners with violations of Rules 440, 402, 342, 401 and 417.11, and Securities and Exchange Commission Rules 17a-3 and 8c-1. In addition, Albert E. Schwabacher, Jr., was separately charged with a violation of Rule 342 and all were alleged to be subject to discipline under Sections 6, 7, 10 and 16 of Article XIV of the N.Y.S.E. Constitution.

47. The N.Y.S.E. failed to meet its obligation to plaintiffs with respect to the following rules, among others, N.Y.S.E. Constitution Articles XIV §§ 6, 7, 10 and 16; N.Y.S.E. Rules 313, 325, 342, 401, 402, 417, 419, 440 and 471.

48. The N.Y.S.E. failed to meet its obligation to plaintiffs to prevent violations of sections 8(c), 10(b) and 17(a) of the Exchange Act and the rules of the Securities and Exchange Commission issued thereunder.

EVENTS SUBSEQUENT TO PLAINTIFFS' PURCHASE OF BLAIR SECURITIES

49. It had not been possible for a long period prior to the merger to obtain audited, reliable financial information about the condition of Schwabacher & Co. nor was it possible to obtain audited, reliable information concerning the financial condition of the Schwabacher Division of Blair and thus the over-

all position of Blair subsequent to the merger at least until well into 1970, if at all.

50. At the time of and subsequent to the merger, the N.Y.S.E. failed to enforce its rules and regulations and the Exchange Act by excusing preparation and distribution of a required statement of financial condition and permitting the audit of Blair as two separate divisions at two separate times for 1969. Blair failed to comply with the N.Y.S.E. rules and the Exchange Act. In fact, it was not possible to audit the Schwabacher division of Blair because of the disasterous state of the records. The independent auditors' report stated:

"The Board of Directors

Blair & Co.

The accompanying statement of financial condition of Blair & Co., Inc. at September 26, 1969 represents a combination of the respective statements of financial condition of its two divisions, Blair, formerly its only operations, and Schwabacher, acquired during the year. . . .

as explained in Note 1, the scope of our examination was restricted to the books and records of Blair Division and did not include a determination as to whether or not there were financial transactions recorded in the books and records of Schwabacher Division which affected its Blair Division. . . .

The statement of financial condition of Schwabacher Division at September 26, 1969 (not shown separately) was prepared by the Company. Inasmuch as we did not make an examination of it in accordance with generally accepted auditing standards nor of any of its financial transactions since June 27, 1969 (referred to below), we express no opinion

"thereon. We did examine a statement of financial condition (as set forth in its Answers to Financial Questionnaire) of the Schwabacher Division at June 27, 1969 and reported thereon under date of August 15, 1969. That examination was made on the same basis and our opinion was qualified with respect to the same matters as described above for the Blair Division.

Inasmuch as we did not make an examination in accordance with generally accepted auditing standards at a single date for both Blair Division and Schwabacher Division, whose individual statements of condition are combined in the accompanying statement of financial condition of Blair & Co., Inc. at September 26, 1969, as explained above, we were unable to express an opinion thereon. It is our opinion, however, that the combined statement has been properly compiled."

51. On or about August 28, 1969, Securities and Exchange Commission Release No. SEA 8677 was publicly issued accepting an offer of settlement wherein Schwabacher and Albert E. Schwabacher, Jr. admitted willful violations of the record-keeping, reporting and hypothecation provisions of the Exchange Act (§§8(c) and 17 (a); Rules 8c-1(a)(2), 17a-3 and 17a-5).

52. The 1969 figures supplied by Blair to the Securities and Exchange Commission on the report required by Rule X-17A-5 indicated that it had no reserves to cover in excess of $2,000,000 in short differences.

53. Commencing in January of 1970 Blair began to cut back its operation and investigate various merger possibilities.

54. On or about August 14, 1970 defendant N.Y.S.E. named five firms (including Blair) who were in serious peril and on or about September 28, 1970 a liquidator was named to wind up the business of Blair.

55. On or about September 30, 1970 a petition was filed in the United States District Court asking that Blair be placed in involuntary bankruptcy and that a receiver be appointed leading to the eventual liquidation of Blair for the benefit of creditors and in a fashion which returned none of the consideration paid by plaintiffs for their securities. Thereafter, the liquidation of Blair has continued and does now continue with defendant N.Y.S.E.'s Special Trust Fund as the current liquidator.

COUNT I

VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT OF 1934, 15 U.S.C. §78(j)(b) AND RULE 10b-5 PROMULGATED THEREUNDER 17 C.F.R. 240.10b-5 AGAINST ALL DEFENDANTS

56. The allegations of paragraphs 1 through 55 are realleged and incorporated by reference herein.

57. Plaintiffs were required to apply for approval and were approved by defendant N.Y.S.E. in order to purchase the securities of Blair.

58. Defendant N.Y.S.E., by its acts, induced and encouraged plaintiffs to purchase the securities of Blair.

59. Defendants Vanderbilt, Lendman and Ramsey participated in the planning and effectuation of the scheme and plan to obtain capital for Blair by the sale of securities to outsiders including plaintiffs without registration of the securities or disclosure of material information.

60. By use of the means and instrumentalities of interstate commerce (transportation and communication) and the United States Mails, in connection with the purchase and sale of securities, defendants and each of them have:

(a) employed devices, schemes and artifices to defraud;

(b) omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices, and a course of ness which operated as a fraud and deceit upon plaintiffs. As a result thereof, defendants thereby violated Section 10(b) of The Exchange Act and the Regulations issued by the Securities and Exchange Commission pursuant to that Section.

61. As a result thereof plaintiffs and the class have been damaged in the amount of the highest value of their investment in the securities of Blair.

62. Wherefore plaintiffs pray judgment as hereinafter set forth.

COUNT II

AIDING AND ABETTING, A VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER AGAINST DEFENDANTS VANDERBILT, LENDMAN, RAMSEY AND N.Y.S.E.

63. The allegations of paragraphs 1 through 55 and 59 are realleged and incorporated by reference herein.

64. Blair sold its securities without registration and without disclosures of material facts in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

65. Defendants Vanderbilt, Lendman, Ramsey and N.Y.S.E. as set forth hereinabove aided and abetted Blair in the sale of its securities in violation of Section 10(b) and Rule 10b-5 promulgated thereunder.

66. As a result of defendants' conduct as above stated in violation of Section 10(b) of the Exchange Act and of the Regulations of the Securities and Exchange Commission issued pursuant to said Section, plaintiffs have been damaged in the amount of their investment in the securities of Blair.

67. Wherefore plaintiffs pray judgment as hereinafter set forth.

COUNT III

CONSPIRACY TO VIOLATE SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER AGAINST DEFENDANTS VANDERBILT, LENDMAN, RAMSEY AND N.Y.S.E.

68. The allegations of paragraphs 1 through 55 and 59 are realleged and incorporated by reference herein.

69. As set forth hereinabove defendants Vanderbilt, Lendman, Ramsey and N.Y.S.E. conspired and agreed with Blair and its officers and directors and Schwabacher and its officers and directors to obtain additional capital for Blair through the issuance of securities which were issued without registration and adequate disclosure of material facts.

70. As a result of defendants' conduct as above stated in violation of Section 10(b) of The Exchange Act and of the Regulations of the Securities and Exchange Commission issued pursuant to said Section, plaintiffs have been damaged in the amount of of the highest value their investments in the securities of Blair.

71. Wherefore plaintiffs pray judgment as hereinafter set forth.

COUNT IV

VIOLATION OF SECTION 20(a) OF THE EXCHANGE ACT 15 U.S.C. §78(t)(a) AGAINST DEFENDANTS VANDERBILT, LENDMAN, RAMSEY AND N.Y.S.E.

72. The allegations of paragraphs 1 through 55 and 59 are realleged and incorporated by reference herein.

73. With respect to the activities of Blair and Schwabacher above described, defendants Vanderbilt, Lendman, Ramsey and N.Y.S.E. were control persons within the meaning of Section 20(a) of The Exchange Act in that the N.Y.S.E. supervised the activities of Schwabacher and Blair and their officers and directors and Vanderbilt, Lendman and Ramsey supervised the activities of Blair,

including its Schwabacher division.

74. As control persons said defendants were under a duty to plaintiffs in connection with the sale of the securities of of Blair.

75. Defendants breached said duty and are therefore liable to plaintiffs pursuant to the terms of Section 20(a) of the Exchange Act.

76. As a result of defendants' conduct as above stated in violation of Section 20(a) of The Exchange Act, plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

77. Wherefore plaintiffs pray judgment as hereinafter set forth.

COUNT V

VIOLATION OF SECTION 6(a)(1) OF THE EXCHANGE ACT, 15 U.S.C. §78(f)(a)(1) AGAINST DEFENDANT N.Y.S.E.

78. The allegations of paragraphs 1 through 55 are realleged and incorporated herein by reference.

79. Pursuant to Section 6(a)(1) of the Exchange Act, the N.Y.S.E. was contractually bound to agree and did agree with the Securities and Exchange Commission to comply with and to enforce so far as within its powers compliance by its members with revision of the Exchange Act and the rules and regulations made thereunder by the Securities and Exchange Commission.

80. Pursuant to the aforesaid contractual responsibility the N.Y.S.E., under certain circumstances required investors in its members to sign and submit a document known as a "knowledgeability letter" in which the investor acknowledged specific risk factors in connection with investment in the member, acknowledged the conduct of an independent investigation into the business of the member including its financial condition and net capital position and disclaimed reliance upon the N.Y.S.E. in making any investment in

a member. Knowledgeability letters were required where there were material risk factors relating to a member known to the N.Y.S.E.

81. Despite material risk factors known to the N.Y.S.E. concerning investment in Blair, the N.Y.S.E. breached its duty to plaintiffs and the class by not requiring knowledgeability letters or otherwise causing disclosure of material risk factors to be made to them.

82. As a result thereof plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

83. Wherefore plaintiffs pray judgment as hereinafter set forth.

COUNT VI

VIOLATION OF SECTION 6(a)(2)-(4) OF THE EXCHANGE ACT

15 U.S.C. §78(f)(a)(2)-(4) AGAINST DEFENDANT N.Y.S.E.

84. The allegations of paragraphs 1 through 55 are realleged and incorporated by reference herein.

85. Pursuant to Section 6(a)(2) of The Exchange Act, the N.Y.S.E. became contractually obligated to submit and did submit to the Securities and Exchange Commission such data concerning its organization, rules of procedure and membership as were necessary or appropriate in the public interest and for the protection of investors.

86. Pursuant to Section 6(a)(3) and 6(a)(4) the N.Y.S.E. became contractually obligated to file and did file with the Securities and Exchange Commission copies of its constitution, articles of incorporation, bylaws or rules or instruments corresponding thereto ("rules of the Exchange") and to furnish to the Securities and Exchange Commission copies of any amendments to the rules of the Exchange forthwith upon their adoption.

87. The sale of unregistered securities of Blair without provision for disclosure of material risk factors through a

knowledgeability letter or otherwise constitutes a violation of various rules of the Exchange submitted to the Securities and Exchange Commission in accordance with the procedures set forth.

88. The N.Y.S.E. breached its duty to plaintiffs by failing to enforce the rules of the Exchange to prevent the sale of unregistered securities of Blair or in the alternative to provide for adequate disclosure of material risk factors through a knowlegeability letter or otherwise.

89. As a result thereof plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

90. Wherefore plaintiffs judgment as hereinafter set forth.

COUNT VII

VIOLATION OF SECTION 6(b) OF THE EXCHANGE ACT

15 U.S.C. §78(f)(b) AGAINST DEFENDANT N.Y.S.E.

91. The allegations of paragraphs 1 through 55 are realleged and incorporated by reference herein.

92. Pursuant to Section 6(b) of the Exchange Act, the N.Y.S.E. was contractually obligated to provide in the rules of the Exchange for the expulsion, suspension or disciplining of a member for conduct or proceeding inconsistent with just and equitable principles of trade and to declare that the willful violation of any provisions of the Exchange Act or any rule or regulation thereunder shall be considered conduct or proceeding inconsistent with just and equitable principles of trade.

93. The rules of the N.Y.S.E. contain the required contractual provisions set forth in paragraph 92 above.

94. The willful sale of unregistered securities of Blair without disclosure of material risk factors through a knowledgeability letter or otherwise constitutes a violation of Section 6(b) of the Exchange Act.

95. The N.Y.S.E. failed to expel, suspend or discipline Blair prior to commission of the willful violation of the Exchange Act and instead approved Blair's plan which violated the Exchange Act.

96. As a result thereof, plaintiffs have been damaged in the amount of the highest value of their investment in the securities of Blair.

97. Wherefore palintiffs pray judgment as hereinafter set forth.

COUNT VIII

VIOLATION OF SECTION 6(a)(1) OF THE EXCHANGE ACT

15 U.S.C. §78(f)(a)(1) AGAINST DEFENDANT N.Y.S.E.

98. The allegations of paragraphs 1 through 55, and 79 are incorporated herein by reference.

99. Pursuant to paragraph 79 above, the N.Y.S.E. was contractually obligated to prevent records keeping violations, financial reporting violations, failures to adhere to principals of good business practice in the conduct of business affairs and net capital violations by members including Schwabacher and Blair.

100. Despite its obligation, the N.Y.S.E. permitted the continued operation of Schwabacher & Co. under the afore-described circumstances and approved the merger of Schwabacher & Co. into Blair and the sale of securities to plaintiffs, all in violation of the N.Y.S.E.'s contractual responsibility under Section 6(a)(1).

101. As a result thereof plaintiffs have been damaged in the amount of the highest value of their investment in the securities of Blair.

102. Wherefore, plaintiffs pray judgment as hereinafter set forth.

COUNT IX

VIOLATION OF SECTION 6(a)(2)-(4) OF THE EXCHANGE ACT

15 U.S.C. §78(f)(a)(2)-(4) AGAINST DEFENDANT N.Y.S.E.

103. The allegations of paragraphs 1 through 55, 85 and 86 are realleged and incorporated by reference herein.

104. The N.Y.S.E. was contractually bound to enforce it rules for the benefit of investors and the public, including plaintiffs.

105. Had the N.Y.S.E. enforced its rules regarding audits and financial reporting with respect to Schwabacher and Blair, there would have been public disclosure of the disastrous condition of Schwabacher and subsequently the Schwabacher division of Blair and Blair itself. The N.Y.S.E. elected instead to cover-up and supress the damaging material information and to knowingly permit and specifically approve sale of securities to plaintiffs.

106. As a result thereof, plaintiffs have been damaged in the amount of the highest value of their investment in the securities of Blair.

107. Wherefore, plaintiffs pray judgment as hereinafter set forth.

COUNT X

VIOLATION OF SECTION 6(a)(2)-(4) OF THE EXCHANGE ACT 15 U.S.C. §78(a)(2)-(4) AGAINST DEFENDANT N.Y.S.E.

108. The allegations of paragraphs 1 through 55, 84, 85 and 86 are realleged and incorporated by reference herein.

109. The N.Y.S.E. breached its contractual duty to plaintiffs by failing to enforce the rules of the Exchange to prevent continued operation of Schwabacher and the merger of Schwabacher into Blair.

110. As a result thereof, plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

111. Wherefore, plaintiffs pray judgment as hereinafter set forth.

COUNT XI

VIOLATION OF SECTION 6(b) OF THE EXCHANGE ACT

15 U.S.C. §78(f)(b) AGAINST DEFENDANT N.Y.S.E.

112. The allegations of paragraphs 1 through 55, 92 and 93 are realleged and incorporated by reference herein.

113. The N.Y.S.E. breached its duty to plaintiffs by failing to prevent a willful violation of the Exchange Act in permitting the continued operation of Schwabacher and the merger of Schwabacher into Blair, the failure to impose timely discipline and the cover-up and supression of material information concerning violation of the Rules of the Exchange and of the Exchange Act.

114. As a result thereof, plaintiffs have been damaged in the amount of the highest value of their investment in the securities of Blair.

115. Wherefore, plaintiffs and the class pray judgment as hereinafter set forth.

COUNT XII

VIOLATION OF SECTION 6(a) OF THE EXCHANGE ACT

15 U.S.C. §78(f)(a) AGAINST DEFENDANT N.Y.S.E.

116. The allegations of paragraphs 1 through 55 and 85 through 88 are realleged and incorporated by reference herein.

117. Plaintiffs maintain herein that the rules and regulations of the N.Y.S.E. effective early in 1969 and at the time of their purchases prohibited the sale of unregistered securities in members by members or the sale of securities without disclosure of material risk factors.

118. The sale of securities without registration or disclosure of material risk factors constituted a violation of the Exchange Act.

119. Subsequent to the date of the sales of securities involved herein, the N.Y.S.E. enacted Rule 313(d) precisely providing for registration of members securities under the securities

Act of 1933 and for disclosure of material risk factors. Rule 313 provides in pertinent part:

"Whenever a member organization shall offer or sell any security, as defined under the Securities Act of 1933, as amended, or the General Rules and Regulations thereunder (the 1933 Act) . . . which security is issued by the member organization for the purpose of raising net capital under Rule 325 of the Board of Governors of the Exchange, the member organization must furnish the Exchange with an opinion of counsel in form and substance satisfactory to the Exchange as to whether or not the securities being offered or sold need be registered under the 1933 Act . . . If, in counsel's opinion, the securities need not be registered under the 1933 Act, his opinion shall state the exemption from the registration requirements of the 1933 Act upon which he is relying and the basis for such reliance. If the securities are required to be registered under the 1933 Act, counsel's opinion shall include, in addition to such other statements as the Exchange in any particular case may require, a statement substantially to the effect . . . nothing has come to counsel's attention that would lead counsel to believe that the registration statement at the time it became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the prospectus at the time the registration statement became effective or at the time of sale of the security contained an untrue statement of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

. . .

Without limiting the generality of the foregoing, counsel,

"among other things, is expected to give appropriate consideration to (a) any other transactions pursuant to which the member organization has raised net capital in the past, or expects to do so in the future, (b) the disclosure of material information regarding the member organization to offerees of the security, and (c) the need for representation by the purchaser of the securities as to his intention to hold the securities for investment." (emphasis added)

120. In the event the court should find that the sale of securities without registration or disclosure of material risk factors does not constitute a violation of the rules of the Exchange, as they existed at the time relevant herein, the N.Y.S.E has breached its contractual obligation to enact a rule prohibiting the aforesaid foreseeable and clear violation of the Exchange Act.

121. As a result of the breach of the N.Y.S.E.'s contractual obligation to make rules to prevent violations of the Exchange Act by its members, plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

122. Wherefore, plaintiffs pray judgment as hereinafter set forth.

COUNT XIII

COMMON LAW FRAUD AGAINST ALL DEFENDANTS

123. The allegations of paragraphs 1 through 55 are realleged and incorporated by reference herein.

124. Defendants, and each of them, made representations of material fact to plaintiffs regarding investment in Blair.

125. Defendants made representations of material fact which were false and defendants further deliberately and actively suppressed from plaintiffs material adverse information concerning the securities of Blair.

126. Defendants and each of them knew material repre-

sentations made to plaintiffs to be false and knowingly suppressed other material facts.

127. The affirmative misrepresentations were made to plaintiffs and material adverse information was suppressed with the intent of inducing them to purchase securities of Blair.

128. Plaintiffs relied upon the aforesaid affirmative misrepresentations.

129. Plaintiffs acted in justifiable reliance upon defendants misrepresentations and without knowledge of the suppressed material adverse information.

130. Plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

131. Plaintiffs are further entitled to the award of punitive damages for fraud against defendants and each of them.

132. Wherefore, plaintiffs pray judgment as hereinafter set forth.

COUNT XIV

BREACH OF FIDUCIARY OBLIGATION AGAINST DEFENDANT N.Y.S.E.

133. The allegations of paragraphs 1 through 55 are realleged and incorporated by reference herein.

134. The N.Y.S.E. holds itself out to the public as a self-regulatory body whose objects include the maintainance of high standards of commercial honor and integrity among members and the promotion and inculcation of just and equitable principles of trade and business.

135. By reason of the matters alleged hereinabove, the N.Y.S.E. was in a fiduciary relationship to plaintiffs. Plaintiffs were thereby induced to display and did display full trust and confidence in the N.Y.S.E. with respect to its approval of the sale of securities of Blair to plaintiffs. Throughout the periods that defendant N.Y.S.E. occupied such a position of trust and confidence, plaintiffs were entitled to a high degree of care

and concern. In addition, defendant N.Y.S.E. had a duty not to prefer or favor its own interests or the interests of its members over the interests of plaintiffs and it was obligated to exercise its supervision, direction and control of the sale of securities of Blair to plaintiffs in a manner consistent with high standards of commercial honor and intergrity and in accordance with just and equitable principals of trade and business.

136. By its conduct as hereinabove alleged, defendant N.Y.S.E. violated its fiduciary duties and obligations to plaintiffs and as a result thereof, plaintiffs have been damaged in the amount of the highest value of their investments in the securities of Blair.

137. Plaintiffs are further entitled to the award of punitive damages against defendant N.Y.S.E. for breach of its fiduciary obligations to plaintiffs.

WHEREFORE, plaintiffs pray judgment as follows:

1. That defendants and each of them be found liable to plaintiffs in the amount of the highest value of their investment in the securities of Blair & Co.;

2. For costs of suit herein incurred;

3. For punitive damages as determined by the trier of fact;

4. For such other and further relief as is deemed just and equitable.

Dated: _____

SPRENGLER, CARLSON, GUBAR & CHURCHILL
280 Park Avenue
New York, New York 10017
Telephone: (212) 682-4444

J. THOMAS HANNAN
LOVITT, HANNAN & HENNIGAN, INC.
Agriculture Building
Embarcadero at Mission
San Francisco, California 94105
Telephone: (415) 362-8769

By _____
J. THOMAS HANNAN

A JURY TRIAL IS DEMANDED ON ALL COUNTS OF THIS COMPLAINT

_____
J. THOMAS HANNAN

AD-2;
AD-10B

NEW YORK STOCK EXCHANGE

NYSE

Deft. Exh. For ID 1
Pl. Exh. In EV
Walter Shapiro CSR
Doyle Reporting Inc.
10-28-05

ALLIED MEMBER OR NON-MEMBER APPLICATION
(LONG FORM)

INSTRUCTIONS

1. Print or type answers
2. Answer *all* questions (state "None" if appropriate).
3. Answer questions *fully*, attaching separate signed sheets or letter of explanation, if necessary.
4. File two copies with Office of the Secretary.
5. Also file two copies of Financial Supplement . (Form AD-2A or AD-2B).
6. Rules 17a-3 and 17a-4 — as amended — under the Securities Exchange Act of 1934, require retention of a copy of this application by the Member Organization.

Attention of applicants is drawn to the following provisions of Article XIV of the Constitution of the Exchange:

Sec. 2. Whenever the Board of Governors, by the affirmative vote of a majority of the Governors then in office, shall stipulate that a member prior to his application for membership, or an allied member prior to the approval of him as a partner in a member firm or as a stockholder in a member corporation, had been guilty of a fraudulent or dishonest act and that the facts and circumstances thereof were not disclosed to the Exchange on his application for membership, or on the application for approval, as the case may be, such member or allied member shall be expelled.

Sec. 3. A member or allied member who shall be adjudged guilty, by the affirmative vote of a majority of the Governors then in office, of making a misstatement upon a material point to the Board of Governors or to a committee authorized thereby or to the Board of Directors of Stock Clearing Corporation or of making on his application for membership, or on the application for approval of him as a partner in a member firm or as a stockholder in a member corporation, a material misstatement to the Exchange may be suspended or expelled as the Board may determine.

By filing this application, an applicant for approval as a limited partner, holder of non-voting stock, holder of debentures, or in any other non-member status requiring approval by the Board of Governors, agrees that approval may be denied or, if granted, may be suspended or withdrawn by the Exchange at any time.

Application for approval by the Board of Governors

of JAMES ARNEIL as
(Give name as it should be shown in Exchange publications.)

- ☐ an allied member of the New York Stock Exchange and a holder of voting stock
- ☒ a holder of non-voting stock
- ☐ a holder of debentures
- ☐ an allied member of the New York Stock Exchange and a general partner
- ☐ a limited partner
- ☒ ~~Special Partner~~

of the member organization, Blair & Co
to be effective on Approval

Address at which applicant will make his office 605 Doneen Bldg., Wenatchee, Washington 98801

I submit the following true, complete and accurate statements of my personal and business history:

1. Full name James Arneil Age 55
2. Home address 921 Bryan Street, Wenatchee, Washington 98801
3. Prince Rupert, B.C. (Place of birth) January 29, 1914 (Month Day-Year of birth) 532-07-2158 (Soc. Sec. No.)
4. I am a { ~~naturalized citizen of the United States.~~ citizen of the United States. ~~Foreign~~ _____

(If a naturalized citizen, submit certificate of naturalization. If U. S. citizenship is claimed because of birth of American parents resulting at time of birth in a foreign country, submit proof of citizenship. If a citizen of foreign country, submit proof of entry into United States.)

5. If married, { ~~wife's maiden name~~ wife's maiden name Kathleen O'Connor
6. Father's name and, if living, his address T. H. Arneil, 32 Alimar Rd., Soquel, Calif.

7. I am or have been a member of the following clubs, societies or fraternal organizations.
(Give names and addresses)

Washington State Bar Association, Seattle, Washington

Wenatchee Golf & Country Club, Wenatchee, Washington

Rotary Club, Wenatchee, Washington

8. I have attended the following educational institutions: (start with elementary schools)

From Mo.	From Yr.	To Mo.	To Yr.	Name and Address of Institution	Day or Evening	Graduate (Yes or No)	Degree
				SEE ATTACHED			

SUBSTANTIALLY ALL TIME MUST BE ACCOUNTED FOR WHEN ANSWERING STATEMENTS 8 AND 9. GIVE RESIDENCE ADDRESS FOR SUCH TIMES AS YOU WERE NEITHER ATTENDING SCHOOL NOR ENGAGED IN BUSINESS.

9. The following is a complete, consecutive statement of my business history since leaving school or college: (For service with the armed forces, give dates, branch of service, rank or rate, identification number and type of discharge).

From Mo.	From Yr.	To Mo.	To Yr.	Name of Business and Address (Street, City and State)	Nature of Business	Position Held	Reason for Terminating Connection
				SEE ATTACHED			

ALL BUSINESS CONNECTIONS NOT SHOWN IN STATEMENT 9 MUST BE SHOWN IN ANSWER TO STATEMENT

10 (a) I am at present a proprietor, partner, director, officer, controlling stockholder, employee, or member of the following business organizations: (Give full details, including address, type of business, date connection was established, and, in the case of the controlling interest, the amount of the controlling interest and circumstances involved.)

SEE ATTACHED

(b) I have at present a financial interest (through direct or indirect stock or bond ownership, through outstanding loans, or otherwise) in the following companies engaged in a securities or financial or kindred business: (Give full details)

NONE

(c) I was formerly a proprietor, partner, director, officer, employee, or member of the following business organizations: (Give dates of connection, type of business, address and position held.)

Columbia River Orchards, Inc., P.O. Box 1706, Wenatchee, Washington May, 1955-May, 1957; orchard ownership; position, general manager and director

11 (a) I have, or have had during the past ten years, transactions with the following brokerage houses, either in my own name or in another style: (Give addresses. State style used for transactions not conducted in own name.)

SEE ATTACHED

(b) I have, or have had during the past ten years, accounts or other dealings (including loans granted or denied) with the following banks or other financial organizations, either in my own name or in another style: (Give addresses. State style used for accounts or loans not carried in own name.)

Seattle-First National Bank, Wenatchee Valley Branch, Wenatchee, Wn.
National Bank of Commerce, Columbia Valley Branch, Wenatchee, Wn.
Wenatchee Federal Savings and Loan Association, Wenatchee, Wn.

ANSWER "YES" OR "NO" TO QUESTIONS 12 THROUGH 21.

12. Have you ever used or been known by any name or style other than as shown in Statements 1 and 11 above? No

13. (a) Have you ever been refused a bond by a surety company? No

(b) Has any surety company paid out any funds on your coverage or cancelled your coverage? No

14. Have your services ever been terminated by any employer? No

15. In your previous business connections or employment in any capacity, has any transaction under your attention ever been the subject of a legal proceeding or a written complaint? No

16. (a) Have you ever been a member, or associated as a principal with a member, of any securities or commodity exchange? No

(b) Have you ever been a member, or associated as a principal with a member, of the National Association of Securities Dealers, Inc., or any other association of security or commodity brokers, dealers, investment bankers or investment advisors? No

(c) Has any application for your approval by such an exchange or association, as a member or otherwise, ever been denied or withdrawn? No

(d) Have you ever been associated (as a principal, employee or otherwise) with any organization which, or a principal of which, to your knowledge was refused membership or withdrew an application for membership in such an exchange or association? No

17 (a) Have you ever been expelled, suspended or otherwise disciplined by the Securities

80

17. (a) Have you ever been expelled, suspended or otherwise disciplined by the Securities and Exchange Commission or have your activities ever been the subject of an investigation by the Commission? — No

(b) Have you ever been expelled, suspended, fined, censured or otherwise disciplined by a securities exchange, commodity exchange, the National Association of Securities Dealers, Inc., or any other association of security or commodity brokers, dealers, investment bankers or investment advisors? — No

(c) Have your activities ever been the subject of an investigation by such an exchange or association, or by or on behalf of any State securities commission? — No

(d) Have you ever been associated (as a principal, employee or otherwise) with any organization which, or a principal of which, to your knowledge was expelled, suspended or otherwise disciplined by such an exchange or association or by the Securities and Exchange Commission? — No

18. (a) Have you ever been denied a license, franchise, permit, certificate or registration required to engage in the securities, commodities, or any other business or profession? — No

(b) Has any such license, franchise, permit, certificate or registration which you have held ever been suspended or revoked? — No

(c) Have you ever been prohibited, temporarily or otherwise, from engaging in the securities, commodities, or any other business or profession, or from dealing in any particular security or commodity? — No

(d) Have you ever been associated with any organization which, or a principal of which, to your knowledge has been prohibited from engaging in any business or profession or from dealing in any particular security or commodity, or whose license, franchise, permit, certificate or registration required to engage in any business or profession has been denied, suspended or revoked? — No

19. (a) Have you ever been arrested for, or formally charged with, the violation of any criminal law (other than minor traffic violations) or have you ever been accused before a court-martial? — No

(b) Are you now or have you ever been involved as a party in any other proceeding before a court, an arbitration tribunal, an administrative agency, or other regulatory body? — Yes See below

20. Have any judgments, liens, attachments or other encumbrances ever been taken or filed against you? — No

21. Have you, or any organization with which you have been associated, ever failed in business, made a compromise with or an assignment for the benefit of creditors, taken advantage of any Exemption Law, or been a party to any voluntary or involuntary bankruptcy or insolvency proceeding? — No

IF YOUR ANSWER TO ANY OF QUESTIONS 12-21 IS "YES", PLEASE GIVE FULL DETAILS (Attach separate signed sheet if necessary):

Question No.	
19 (b)	Plaintiff in pending action against Reynolds & Co. and Ralph E. Carpenter, Jr., New York, for damages in connection with stock transactions in 1963. U. S. District Court, Southern Division, New York. Cause No. 65 Civil, 944

(OVER)

8. Educational Institutions:

From Mo. Yr.	To Mo. Yr.	Name and Address	Day or Evening	Graduate (Yes or No)	Degree
)/1919	6/1921	Alki Grade School Seattle, Washington	Day	No	
/1921	6/1922	Peshastin Grade School Peshastin, Washington	Day	No	
/1922	6/1925	John B. Allen Grade School Seattle, Washington	Day	No	
)/1925	6/1926	Whitman Grade School Wenatchee, Washington	Day	No	
)/1926	6/1927	John B. Allen Grade School Seattle, Washington	Day	Yes	Eighth grade diploma
)/1927	6/1929	Ballard High School Seattle, Washington	Day	No	
/1929	6/1931	Wenatchee High School Wenatchee, Washington	Day	Yes	High school diploma
/1932	6/1939	University of Washington Seattle, Washington	Day	Yes	B.A. 1936 Juris Doctor 1939

. Business History:

From Mo. Yr.	To Mo. Yr.	Name and Address	Nature of Business	Position Held	Reason for Terminating Connection
/1931	1/1932	Pacific Fruit & Produce Co. Wenatchee, Washington	Fruit Warehouse	Warehouse employee	Attend college
/1939	10/1940	Crollard & O'Connor Seattle First Nat'l Bank Bldg., Wenatchee, Wn.	Attorneys	Attorney	Appointment F.B.I.
0/1940	9/1944	U.S. Dept. of Justice Federal Bureau of Investigation, Washington, D.C.	Investigative	Special Agent F.B.I.	Commenced U.S.N.
/1944	6/1946	U. S. Navy	Military	Lt. J.G. SC(S) Serial # 425638 Discharge-Certificate of Satisfactory Service	Release
/1946	11/1948	Chelan County Wenatchee, Washington	Legal	Deputy Prosecuting Attorney and Prosecuting Attorney	Enter private law practice
1/1948	9/1963	Shiner & Arneil Savings & Loan Bldg. Wenatchee, Washington	Attorneys	Partner	New partnership
/1963	1/1966	Shiner, Davis & Arneil Doneen Building Wenatchee, Washington	Attorneys	Partner	New partnership
/1966	1/1969	Davis, Arneil & Dorsey Same address	Attorneys	Partner	New partnership
/1969	Present	Davis, Arneil, Dorsey & Kight Same address	Attorneys	Partner	New partnership

10 (a) Business Organizations:

Name and Address	Type of Business	Date connection was established	Position held	Time	Compensation
Davis, Arneil, Dorsey & Kight 605 Doneen Bldg. Wenatchee, Washington	Law firm	Jan. 1969	Partner	80%	Approx. $50,000.00
General Telephone of Northwest Everett, Washington	Telephone business	Mar. 1962	Director	Bi-monthly meetings	$1,200.00
Orondo Orchards, Inc. P.O. Box 1706 Wenatchee, Washington	Orchard ownership	May, 1954	Director & one-half owner	10%	*
* Compensation as director				$1,500.00	annually
One-half of earnings distributed, approx.				20,000.00	annually
Highland Orchards, Inc. P.O. Box 1706 Wenatchee, Washington	Orchard ownership	Feb. 1965	Director & one-half owner & secretary	10%	*
* Compensation as director				$ 1,500.00	annually
One-half of earnings of corporation, approx.				60,000.00	annually

- - - - - - - - - - -

1 (a) Transactions with Brokerage Houses:

Walston & Co.	Seattle, Washington
Harris Upham & Co.	Seattle, Washington
Foster & Marshall	Seattle, Washington
E. F. Hutton & Co.	New York, N.Y.
Reynolds & Co.	New York, N.Y.
Blair & Co.	New York, N.Y.

(Copy Receipt) (Clerk's Date Stamp)

Superior Court of Washington for CHELAN County

I, MURIEL E. ROATH, County Clerk and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, which Court is a Court of record with a Clerk and a Seal, having common law jurisdiction; do hereby certify that David J. Dorsey whose name is subscribed to the certificate attached to and made a part of the annexed instrument, was on the 15 day of April, 19 69, the date on which he signed the same, a duly appointed and qualified notary public in and for said County and State and authorized by law to administer oaths and take acknowledgments therein. That I am acquainted with his signature and hand writing and verily believe that the signature subscribed to said certificate is his signature. And that said certificate is made and executed according to the laws of the State of Washington.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 15 day of April, 19 69.

MURIEL E. ROATH
Clerk.

By Margaret Smith
Deputy.

This blank is guaranteed against successful alteration, which guarantee is issued by Washington Legal Blank Co. (Certificate of Official Character) Form No. 147-F

85

Question No.	

22. What will be your specific activities (if any) with the member organization?

None

23. Other than as shown in Statement 10, do you intend to devote your time exclusively to the business of the member organization? (Answer "Yes" or "No".) No

24. For purposes of determining examination requirements in connection with joint New York Stock Exchange –National Association of Securities Dealers, Inc. examinations, please indicate whether or not you have ever been registered with the National Association of Securities Dealers, Inc.? (Answer "Yes" or "No".)

No

I RECOGNIZE THAT THE STATEMENTS HEREIN (AND IN EVERY SUPPLEMENTARY SHEET ATTACHED HERETO) WILL BE VERIFIED BY INVESTIGATION, AND HEREBY DECLARE THAT THEY ARE TRUE, COMPLETE AND ACCURATE.

In consideration of the approval by the Board of Governors of my firm's application for me to become an allied member of the New York Stock Exchange and a general partner or holder of voting stock, I hereby agree that unless the Exchange waives its required basic allied member examination, I will, within three months following (i) one year after becoming an allied member without having passed such basic examination or (ii) my failure to pass such basic examination after not more than three attempts, whichever occurs first, retire as a general partner of, or dispose of all of my voting stock in my member organization.

I further state that I have read the Constitution and Rules of the Board of Governors of the New York Stock Exchange and I hereby make application to become an allied member of the Exchange. I hereby pledge myself to abide by the Constitution and Rules of the Board of Governors of the New York Stock Exchange as the same have been or shall be from time to time amended, and by all rules and regulations adopted pursuant to the Constitution, this pledge to become effective in the event of, and forthwith upon, the approval of this application.

*The language enclosed in asterisks applies only to proposed allied members.

Date April 15, 1969

(Signature of Applicant)

State of Washington
County of Chelan } ss.:

On the 15th day of April in the year 19 69

before me personally came JAMES ARNEIL to me known, and known to me to be the person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Notary Public in and for the State of Washington, residing at Wenatchee

NOTE: If executed outside of New York State, attach Certificate of County Clerk or other appropriate official as to the authority of the Notary Public or other official taking the acknowledgment.

AD-18

CORPORATION

File 2 Copies

NEW YORK STOCK EXCHANGE

Financial Supplement to Application of

JAMES ARNEIL, Dated ~~April 15~~ MAY 13, 1969

Concerning the Member Corporation,

BLAIR & Co., INC

1. My net worth (including equities in real estate, securities and other property) is in excess of $ 1,000,000.00

STRIKE OUT INAPPLICABLE WORDS IN BRACKETS. A STATEMENT ANSWERED "WILL NOT" REQUIRES NO FURTHER ANSWER.

2. I [~~will~~] [will not] be a director of the corporation.

3. I [~~will~~] [will not] be an officer of the corporation. (State office to be held, if any): _____

4. I [will] [~~will not~~] own 300 shares of non voting stock representing 0.166% of the voting stock of the corporation for which I will pay $ 1,134 representing [par] [book] [~~agreed~~] value.

5. I [will] [~~will not~~] own 73 shares of non-voting stock representing 0.73% of the non-voting stock of the corporation for which I will pay $ 7,300 representing [par] [book] [~~agreed~~] value.

6. I [~~will~~] [will not] own [_____ debentures bearing _____% interest for which I will pay $_____] [_____ participating debentures for which I will pay $_____].

7. I [will] [~~will not~~] make a subordinated loan to the corporation of $ 150,000 — in [cash] [market value of securities], for which I will receive interest at the rate of 7 %. The subordinated loan will expire _____

8. I [~~will~~] [will not] subordinate my claim to the equity in my account with the corporation, captioned _____, which has a [debit] [credit] balance of $ _____ and long securities with a market value of $_____. As compensation therefor, I will receive interest at the rate of _____%. The subordination of my claim will expire _____

9. (a) The corporation [~~will~~] [will not] pay me a salary of $_____ per _____.

(b) The corporation [~~will~~] [will not] guarantee me compensation of $_____ a year, in salary and/or participation in corporate profits.

10. (a) I have not borrowed, nor will I borrow, and no one other than myself has any interest in, any of the cash or securities used to purchase the corporation's stock or debentures, loaned to the corporation, or included in my subordinated account with the corporation (as the case may be) [EXCEPT AS FOLLOWS]:

NO EXCEPTIONS

BEST COPY AVAILABLE

(b) I have not given, nor will I give without the prior approval of the exchange, any note, obligation, acknowledgment, assignment or other agreement with respect to the stock or debentures to be purchased, the property to be loaned, or the property included in my subordinated account (as the case may be); nor with respect to any interest or compensation which I will receive from the corporation [EXCEPT AS FOLLOWS]:

NO EXCEPTIONS

(c) (FOR PROPOSED ALLIED MEMBERS ONLY) I have no other loans or borrowings reportable under Rule 420 of the Board of Governors [EXCEPT AS FOLLOWS]:

(The space above may be used for the fuller explanation of any Statement in this Supplement.)

(Signature of Applicant)

I certify that the answers to Statements 2 through 9 above are correct.

(Signature of Director of Member Corporation)

AD-2
AD-10B

NEW YORK STOCK EXCHANGE

Deft. Exh. [illegible]
Pl. Exh. [illegible]
Ruth Gross
Doyle Reporting Inc.
10/29/75

ALLIED MEMBER OR NON-MEMBER APPLICATION
(LONG FORM)

INSTRUCTIONS

1. Print or type answers
2. Answer *all* questions (state "None" if appropriate).
3. Answer questions *fully*, attaching separate signed sheets or letter of explanation, if necessary.
4. File two copies with Office of the Secretary.
5. Also file two copies of Financial Supplement (Form AD-2A or AD-2B).
6. Rules 17a-3 and 17a-4 — as amended — under the Securities Exchange Act of 1934, require retention of a copy of this application by the Member Organization.

Attention of applicants is drawn to the following provisions of Article XIV of the Constitution of the Exchange:

Sec. 2. Whenever the Board of Governors, by the affirmative vote of a majority of the Governors then in office, shall adjudge that a member prior to his application for membership, or an allied member prior to the approval of him as a partner in a member firm or as a stockholder in a member corporation, had been guilty of a fraudulent or dishonest act and that the facts and circumstances thereof were not disclosed to the Exchange on his application for membership, or on the application for approval, as the case may be, such member or allied member shall be expelled.

Sec. 3. A member or allied member who shall be adjudged guilty, by the affirmative vote of a majority of the Governors then in office, of making a misstatement upon a material point to the Board of Governors or to a committee authorized thereby or to the Board of Directors of Stock Clearing Corporation or of making on his application for membership, or on the application for approval of him as a partner in a member firm or as a stockholder in a member corporation, a material misstatement to the Exchange may be suspended or expelled as the Board may determine.

By filing this application, an applicant for approval as a limited partner, holder of non-voting stock, holder of debentures, or in any other non-member status requiring approval by the Board of Governors, agrees that approval may be denied or, if granted, may be suspended or withdrawn by the Exchange at any time.

Application for approval by the Board of Governors

of VERNON A. STOCKWELL as
(Give name as it should be shown in Exchange publications.)

- ☐ an allied member of the New York Stock Exchange and a holder of voting stock
- ☐ a holder of non-voting stock
- ☐ a holder of debentures
- ☐ an allied member of the New York Stock Exchange and a general partner
- ☐ a limited partner
- ☐ _____

of the member organization, _____

to be effective _____

Address at which applicant will make his office 1101 Cedar Street, Wenatchee, Washington 98801

I submit the following true, complete and accurate statement of my personal and business history:

1. Full name Vernon A. Stockwell Age 50
2. Home address 1101 Cedar Street, Wenatchee, Washington 98801
3. Holcombe, Wisconsin (Place of birth) August 17, 1918 (Month-Day-Year of birth) 534-09-9843 (Soc. Sec. No.)
4. I am a { native born citizen of the United States. / [illegible] / [illegible] _____

(If a naturalized citizen, submit certificate of naturalization. If U. S. citizenship is claimed because of birth of American parents residing at time of birth in a foreign country, submit proof of citizenship. If a citizen of foreign country, submit proof of entry into United States.)

5. If married, [illegible] wife's maiden name Clara E. Weasea
6. Father's name and, if living, his address Herbert E. Stockwell, Wenatchee, Wash.

84

7. I am or have been a member of the following clubs, societies or fraternal organizations:
(Give names and addresses)

Washington State Horticultural Association, Yakima, Washington

8. I have attended the following educational institutions: (*start with elementary schools*)

From Mo.	From Yr.	To Mo.	To Yr.	Name and Address of Institution	Day or Evening	Graduate (Yes or No)	Degree
	/1924	6/	1928	Gaines School, Entiat Valley Entiat, Washington	Day	No	
	/1928	6/	1929	Elementary School Anacortes, Washington	Day	No	
	/1929	6/	1932	Gaines School, Entiat Valley Entiat, Washington	Day	Yes	Grade school diploma
	/1933	1/	1934	Entiat High School Entiat, Washington	Day	No	

SUBSTANTIALLY ALL TIME MUST BE ACCOUNTED FOR WHEN ANSWERING STATEMENTS 8 AND 9. GIVE RESIDENCE ADDRESS FOR SUCH TIMES AS YOU WERE NEITHER ATTENDING SCHOOL NOR ENGAGED IN BUSINESS.

9. The following is a complete, consecutive statement of my business history since leaving school or college: (For service with the armed forces, give dates, branch of service, rank or rate, identification number and type of discharge).

From Mo.	From Yr.	To Mo.	To Yr.	Name of Business and Address (Street, City and State)	Nature of Business	Position Held	Reason for Terminating Connection
				SEE ATTACHED			

ALL BUSINESS CONNECTIONS NOT SHOWN IN STATEMENT 9 MUST BE SHOWN IN ANSWER TO STATEMENT

ALL BUSINESS CONNECTIONS NOT SHOWN IN STATEMENT 7 MUST BE SHOWN IN ANSWER TO STATEMENT 8

9. Business History:

From Mo. Yr.	To Mo. Yr.	Name and Address	Nature of Business	Position Held	Reason for Terminating Connection
/1935	/1938	C. A. Harris & Son Ardenvoir, Washington	Lumbering	Mill employee	Other employment
2/1939	3/1940	Montgomery-Ward & Co. Wenatchee, Washington	Business retailing	Salesman	Promotion
3/1940	3/1942	Montgomery-Ward & Co. LaGrande, Oregon	Business retailing	Department head	To enter defense work
6/1942	4/1943	Seattle-Tacoma Shipbuilding Corporation Seattle, Washington	Navy ship construction	Welder	Other employment
4/1943	2/1945	Todd Shipyards, Inc. Seattle, Washington	Ship repair	Welder	Became self-employed
4/1945	4/1954	Self-employed Wenatchee, Washington	Orchard ownership	Owner & Manager	Sold orchard
4/1954	Present	Orondo Orchards, Inc. P.O. Box 1706 Wenatchee, Wn. 98801	Orchard ownership	Owner & Manager	Not terminated
5/1955	5/1957	Columbia River Orchards, Inc., P.O. Box 1706 Wenatchee, Washington	Orchard ownership	General Manager	Sold stock interest
3/1965	Present	Highland Orchards, Inc. P.O. Box 1706 Wenatchee, Washington 98801	Orchard ownership	General Manager	Not terminated

Leonard A. Harris II

10 (a) Business Organizations:

Name and Address	Type of Business	Date connection was established	Position held	Time	Compensation
Orondo Orchards, Inc. P.O. Box 1706 Wenatchee, Washington 98801	Orchard ownership	May, 1954	President, general manager & one-half owner	Substantially 50%	*
* Compensation as general manager and director, approximately					$15,000.00 annually
One-half of earnings distributed, approx.					20,000.00 annually
Highland Orchards, Inc. P.O. Box 1706 Wenatchee, Washington 98801	Orchard ownership	May, 1965	President, general manager & one-half owner	Substantially 50%	*
* Compensation as general manager and director, approximately					$15,000.00 annually
One-half of earnings of corporation, approximately					60,000.00 annually
Washington-Oregon Canning Pear Association, Holtzinger Bldg. Yakima, Washington	Price negotiation for members	1954	Director	Meetings on call, approx. bi-monthly	Expense

11 (a) Transactions with Brokerage Houses:

Walston & Co.	Seattle, Washington
Harris Upham & Co.	Seattle, Washington
Foster & Marshall	Seattle, Washington
E. F. Hutton & Co.	New York, N.Y.
Reynolds & Co.	New York, N.Y.
Blair & Co.	New York, N.Y.

Brewer et. Stetson

[redacted] No

am at present a proprietor, partner, director, officer, controlling stockholder, employee, or member of the following business organizations: (Give full details including address, type of business, date connection was established, position held, amount of time devoted thereto and compensation received.)

SEE ATTACHED

(b) I have at present a financial interest (through direct or indirect stock or bond ownership, through outstanding loans, or otherwise) in the following companies engaged in a securities or financial or kindred business: (Give full details)

NONE

(c) I was formerly a proprietor, partner, director, officer, employee, or member of the following business organizations: (Give dates of connection, type of business, address and position held.)

Columbia River Orchards, Inc., P.O. Box 1706, Wenatchee, Washington May, 1955-May, 1957; orchard ownership; position, general manager and director

11 (a) I have, or have had during the past ten years, transactions with the following brokerage houses, either in my own name or in another style: (Give addresses. State style used for transactions not conducted in own name.)

SEE ATTACHED

(b) I have, or have had during the past ten years, accounts or other dealings (including loans granted or denied) with the following banks or other financial organizations, either in my own name or in another style: (Give addresses. State style used for accounts or loans not carried in own name.)

Seattle-First National Bank, Wenatchee Valley Branch, Wenatchee, Wn.
National Bank of Commerce, Columbia Valley Branch, Wenatchee, Wn.
Wenatchee Federal Savings and Loan Association, Wenatchee, Wn.

ANSWER "YES" OR "NO" TO QUESTIONS 12 THROUGH 21.

12. Have you ever used or been known by any name or style other than as shown in Statements 1 and 11 above? — No

13. (a) Have you ever been refused a bond by a surety company? — No

(b) Has any surety company paid out any funds on your coverage or cancelled your coverage? — No

14. Have your services ever been terminated by any employer? — No

15. In your previous business connections or employment in any capacity, has any transaction under your attention ever been the subject of a legal proceeding or a written complaint? — No

16. (a) Have you ever been a member, or associated as a principal with a member, of any securities or commodity exchange? — No

(b) Have you ever been a member, or associated as a principal with a member, of the National Association of Securities Dealers, Inc., or any other association of security or commodity brokers, dealers, investment bankers or investment advisors? — No

(c) Has any application for your approval by such an exchange or association, as a member or otherwise, ever been denied or withdrawn? — No

(d) Have you ever been associated (as a principal, employee or otherwise) with any organization which, or a principal of which, to your knowledge was refused membership or withdrew an application for membership in such an exchange or association? — No

17. (a) Have you ever been expelled, suspended or otherwise disciplined by the Securities and Exchange Commission or have your activities ever been the subject of an investigation by the Commission? — No

(b) Have you ever been expelled, suspended, fined, censured or otherwise disciplined

association?	No
17. (a) Have you been expelled, suspended or otherwise disciplined by the Securities and Exchange Commission or have your activities ever been the subject of an investigation by the Commission?	No
(b) Have you ever been expelled, suspended, fined, censured or otherwise disciplined by a securities exchange, commodity exchange, the National Association of Securities Dealers, Inc., or any other association of security or commodity brokers, dealers, investment bankers or investment advisors?	No
(c) Have your activities ever been the subject of an investigation by such an exchange or association, or by or on behalf of any State securities commission?	No
(d) Have you ever been associated (as a principal, employee or otherwise) with any organization which, or a principal of which, to your knowledge was expelled, suspended or otherwise disciplined by such an exchange or association or by the Securities and Exchange Commission?	No
18. (a) Have you ever been denied a license, franchise, permit, certificate or registration required to engage in the securities, commodities, or any other business or profession?	No
(b) Has any such license, franchise, permit, certificate or registration which you have held ever been suspended or revoked?	No
(c) Have you ever been prohibited, temporarily or otherwise, from engaging in the securities, commodities, or any other business or profession, or from dealing in any particular security or commodity?	No
(d) Have you ever been associated with any organization which, or a principal of which, to your knowledge has been prohibited from engaging in any business or profession or from dealing in any particular security or commodity, or whose license, franchise, permit, certificate or registration required to engage in any business or profession has been denied, suspended or revoked?	No
19. (a) Have you ever been arrested for, or formally charged with, the violation of any criminal law (other than minor traffic violations) or have you ever been accused before a court-martial?	No
(b) Are you now or have you ever been involved as a party in any other proceeding before a court, an arbitration tribunal, an administrative agency, or other regulatory body?	Yes See below
20. Have any judgments, liens, attachments or other encumbrances ever been taken or filed against you?	No
21. Have you, or any organization with which you have been associated, ever failed in business, made a compromise with or an assignment for the benefit of creditors, taken advantage of any Exemption Law, or been a party to any voluntary or involuntary bankruptcy or insolvency proceeding?	No

IF YOUR ANSWER TO ANY OF QUESTIONS 12-21 IS "YES", PLEASE GIVE FULL DETAILS (Attach separate signed sheet if necessary):

Question No.	
19 (b)	Plaintiff in pending action against Reynolds & Co. and Ralph E. Carpenter, Jr., New York, for damages in connection with stock transactions in 1963, U. S. District Court, Southern Division, New York, Cause No. 65 Civil, 945

(OVER)

(Copy Receipt) | (Clerk's Date Stamp)

Superior Court of Washington for CHELAN County

I, MURIEL E. ROATH, County Clerk and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, which Court is a Court of record with a Clerk and a Seal, having common law jurisdiction; do hereby certify that David L. Dorsey whose name is subscribed to the certificate attached to and made a part of the annexed instrument, was on the 15 day of April, 19 69, the date on which he signed the same, a duly appointed and qualified notary public in and for said County and State and authorized by law to administer oaths and take acknowledgments therein. That I am acquainted with his signature and hand writing and verily believe that the signature subscribed to said certificate is his signature. And that said certificate is made and executed according to the laws of the State of Washington.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 15 day of April, 19 69.

MURIEL E. ROATH
Clerk.

By Margaret Smith
Deputy.

This blank is guaranteed against successful alteration, which guaranty is insured Washington Legal Blank Co. (Certificate of Official Character)

Form No. 141-P

April 15 1969 Warren A. Chamberlin

95

Question No.	

22. What will be your specific activities (if any) with the member organization?

None

23. Other than as shown in Statement 10, do you intend to devote your time exclusively to the business of the member organization? (Answer "Yes" or "No".) No

24. For purposes of determining examination requirements in connection with joint New York Stock Exchange -National Association of Securities Dealers, Inc. examinations, please indicate whether or not you have ever been registered with the National Association of Securities Dealers, Inc.? (Answer "Yes" or "No".)

No

I RECOGNIZE THAT THE STATEMENTS HEREIN (AND IN EVERY SUPPLEMENTARY SHEET ATTACHED HERETO) WILL BE VERIFIED BY INVESTIGATION, AND HEREBY DECLARE THAT THEY ARE TRUE, COMPLETE AND ACCURATE.

In consideration of the approval by the Board of Governors of my firm's application for me to become an allied member of the New York Stock Exchange and a general partner or holder of voting stock, I hereby agree that unless the Exchange waives its required basic allied member examination, I will, within three months following (i) one year after becoming an allied member without having passed such basic examination or (ii) my failure to pass such basic examination after not more than three attempts, whichever occurs first, retire as a general partner of, or dispose of all of my voting stock in my member organization.

I further state that I have read the Constitution and Rules of the Board of Governors of the New York Stock Exchange and I hereby make application to become an allied member of the Exchange. I hereby pledge myself to abide by the Constitution and Rules of the Board of Governors of the New York Stock Exchange as the same have been or shall be from time to time amended, and by all rules and regulations adopted pursuant to the Constitution, this pledge to become effective in the event of, and forthwith upon, the approval of this application.

*The language enclosed in asterisks applies only to proposed allied members.

Date April 15, 1969

Vernon A. Stockwell
(Signature of Applicant)

State of Washington
County of Chelan } ss.:

On the 15th day of April in the year 1969

before me personally came VERNON A. STOCKWELL to me known, and known to me to be the person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Notary Public in and for the State of Washington, residing at Wenatchee

NOTE: If executed outside of New York State, attach Certificate of County Clerk or other appropriate official as to the authority of the Notary Public or other official taking the acknowledgment.

AC-18

CORPORATION

File 2 Copies

NEW YORK STOCK EXCHANGE

Financial Supplement to Application of

VERNON A. STOCKWELL Dated ~~April 15~~ May 12, 1969,

Concerning the Member Corporation,

Blair & Co Inc

1. My net worth (including equities in real estate, securities and other property) is in excess of $ 1,000,000

STRIKE OUT INAPPLICABLE WORDS IN BRACKETS. A STATEMENT ANSWERED "WILL NOT" REQUIRES NO FURTHER ANSWER.

2. I [~~will~~] [will not] be a director of the corporation.

3. I [~~will~~] [will not] be an officer of the corporation. (State office to be held, if any): _____

4. I [will] [~~will not~~] own 372 shares of Non voting stock representing 0.166% of the voting stock of the corporation for which I will pay $ 15.37 representing [par] [book] [agreed] value.

5. I [will] [~~will not~~] own 43 shares of non-voting stock representing 0.22% of the non-voting stock of the corporation for which I will pay $ 43.00 representing [par] [book] [agreed] value.

6. I [~~will~~] [will not] own [_____ debentures bearing _____% interest for which I will pay $_____] [_____ participating debentures for which I will pay $_____].

7. I [will] [~~will not~~] make a subordinated loan to the corporation of $ 50,000 in [~~cash~~] [market value of securities], for which I will receive interest at the rate of 3 %. The subordinated loan will expire _____

8. I [~~will~~] [will not] subordinate my claim to the equity in my account with the corporation, captioned _____, which has a [debit] [credit] balance of $_____ and long securities with a market value of $ _____. As compensation therefor, I will receive interest at the rate of _____%. The subordination of my claim will expire _____

9. (a) The corporation [~~will~~] [will not] pay me a salary of $_____ per _____

(b) The corporation [~~will~~] [will not] guarantee me compensation of $_____ a year, in salary and/or participation in corporate profits.

10. (a) I have not borrowed, nor will I borrow, and no one other than myself has any interest in, any of the cash or securities used to purchase the corporation's stock or debentures, loaned to the corporation, or included in my subordinated account with the corporation (as the case may be) [EXCEPT AS FOLLOWS]:

No exceptions

(b) I have no given, nor will I give without the prior approval of the Exchange, any note, obligation, acknowledgment, assignment or other agreement with respect to the stock or debentures to be purchased, the property to be loaned, or the property included in my subordinated account (as the case may be), nor with respect to any interest or compensation which I will receive from the corporation [EXCEPT AS FOLLOWS]:

No exceptions

(c) (FOR PROPOSED ALLIED MEMBERS ONLY) I have no other loans or borrowings reportable under Rule 420 of the Board of Governors [EXCEPT AS FOLLOWS]:

(The space above may be used for the fuller explanation of any Statement in this Supplement.)

Vernon A. Stickney
(Signature of Applicant)

I certify that the answers to Statements 2 through 9 above are correct.

Benjamin H. Stickney
(Signature of Director of Member Corporation)

J A M E S A R N E I L, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY MR. REILLY:

Q State your name, please.

A James Arneil.

Q Where do you presently reside?

A 921 Bryan Street actually is my permanent address. I am staying at the New York Athletic Club here.

MR. REILLY: Would you mark as New York Stock Exchange Exhibit 1 for identification a document which I believe is an application for approval of Mr. Arneil by the New York Stock Exchange, including the financial supplement to that application.

(Application for approval of Mr. Arneil by the New York Stock Exchange, including the financial supplement, was marked NYSE Exhibit No. 1 for identification, as of this date.)

Q Mr. Arneil, I show you this document marked New York Stock Exchange Exhibit 1 and ask that you look it over with whatever care you choose. I want to ask you thereafter if it bears your signature in a couple of places and whether the information contained in this, so

VERNON A. STOCKWELL, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY MR. REILLY:

Q Will you state your full name and address?

A Vernon A. Stockwell, 1101 Cedar Street, Wenatchee, Washington.

Q Mr. Stockwell, before we recessed at noon today, I indicated to your counsel that to the extent you would be willing to adopt as your testimony any portion of that given by Mr. Arneil, it may expedite this deposition.

As I am sure your counsel has advised you, you can answer any question you want as you best see fit. I was merely suggesting that as a possible way of proceeding. I don't know whether it is appropriate to ask of Mr. Hannan at this time whether it would be appropriate for me to proceed on that basis or to forget about it.

MR. HANNAN: I don't know, but I will offer this suggestion: Without a transcript of what Mr. Arneil has said, it is very difficult; our hearing and memories are somewhat fallible. We would be willing to review the transcript of Mr.

MR. REILLY: I have no further questions of this witness.

MS. GITTELMAN: I have a few.

EXAMINATION

BY MS. GITTELMAN:

Q Mr. Stockwell, during the period from January 1969 until the present, did you continually reside in the State of Washington?

A Yes, I did; I have.

Q You also testified earlier that while you subscribe occasionally to The Wall Street Journal you do not remember whether you subscribed in 1969?

A I don't remember. I could have.

Q Would you have any records, a check to pay for the subscription, that you could refer to?

A I might or might not.

Q Would you endeavor to look for it?

A Certainly.

Q During the time that you were considering making this investment in Blair, did you have any direct communication with Mr. Ramsey?

A Well, in the substance of me writing him a letter or calling him, no. I think I saw material signed by Mr. Ramsey; that is, stockholder letters or

BEST COPY AVAILABLE

Q I want to ask you some questions as to the manner in which your joint securities account with Mr. Stockwell operated. If I may assume that you had already opened such an account, whether it be with Blair or some other firm it's not particularly important right now. Would there come a time when you and Mr. Stockwell would discuss the purchase of some security for that account?

I think you indicated previously that there were transactions but they were, as you believe, infrequent.

A At the moment I can't recall in any of those accounts anything other than the initial purchase and the sale but there could have been some additions to it.

Q The initial purchase?

A Yes, and the ultimate sale. But there could have been infrequent addition or some change in there.

Q When you say the initial purchase, would that be --

A To open the account.

Q Just open the account?

A Yes.

Q Would that be the initial purchase of just one company's security or would it be securities of

several or more companies?

A I almost have to look at my records, Mr. Reilly. I think largely it was just one security.

Q Can you recall the name of one company for illustration purposes?

A Of the security?

Q Yes.

A The last one was the purchase of Centronics Data.

Q How do you spell that, sir?

A Centronics, Centronics.

Q What was the approximate total price of the shares of Centronics that you purchased in opening one of these joint accounts? An approximate figure is all I am asking.

A The stock fluctuates so widely in price I don't know. I would hazard a guess, though, that somewhere between 15 and 25. I can't tell you better than that.

Q Taking this particular security, Centronics, and say within this range of perhaps 15 to 25 thousand dollars worth of its stock, is that what you mean, 15 to 25 thousand or 15 to 25 dollars a share?

A Did I say thousand? I meant dollars.

Q I'm sorry.

A You asked me the price of the stock and I am

estimating it was the price per share somewhere between 15 and 25 dollars.

Q Do you recall how many shares were purchased?

A I believe that was 5,000.

Q 5,000?

A Yes.

Q It would be roughly in the range between 75 to 125 thousand dollars, total purchase price?

A If my figures are right, it could be, yes.

Q I assume from your earlier testimony that you discussed this purchase with Mr. Stockwell prior to making it.

A That is correct.

Q Did you discuss that with anyone else?

A I would be reasonably sure that it was discussed with Mr. McNell.

Q Did you consider any written material prior to making that purchase or jointly making that purchase -- balance sheet, income statement, anything like that?

A I doubt it.

Q Do you know whether Mr. Stockwell consulted any such data?

A I don't know that he did.

Q Would it be fair to say that you relied

A No, not at the present time.

MR. THOMAJAN: I think I should state for the record, Mr. Ramsey, as a financial consultant, is under the direction of whatever executive branch it is that he reports to, and will give financial consultation to such agencies of the Federal Government as he is directed to. He is currently assigned to the Small Business Administration; is that a fair statement?

THE WITNESS: It is a fair statement.

Q Are you aware of any pending change in your assignment?

A No.

Q Can you trace for us your path of advancement through Blair & Co., from approximately 1963, the date when you joined Blair, to the 1970 date when you left Blair?

A I joined as a salesman, as a Sales Manager, and retained that post until - - the dates I can't remember, but I was made Executive Vice President, I'm going to say in 1966, 1967.

Again, in charge of sales and retained that until May 1st, 1969, when I was made President of the firm.

Now, there was, however, an office of the President formed in, I think it was the latter part of 1967, I guess it was in 1968, sometime during 1968, in which a certain number of people were assigned to the office of

Q Did you at any time execute a knowledgeability letter?

A Myself? Not to my knowledge. I may have, but I don't recall it.

Q Are you aware of any knowledgeability letters being required in connection with any investment in Blair & Co.?

MR. THOMAJAN: Objection. You mean required by Blair & Co.?

MR. HANNAN: By anyone.

A Yes, I think the New York Stock Exchange asked for certain knowledgeability letters with various people who did put money in Blair.

Q Did you have any discussions with anyone at the New York Stock Exchange concerning the use of knowledgeability letters?

A No.

Q From whatever source, do you have any understanding as to the circumstances under which knowledgeability letters were acquired by New York Stock Exchange?

A No.

Q At some point in time, did you become a member of the Executive Committee at Blair?

A Yes.

Q What was the Executive Committee?

BLAIR & CO., INC.
20 BROAD STREET
NEW YORK, N.Y. 10005

Members
New York Stock Exchange
American Stock Exchange
Midwest Stock Exchange

Cable Address
OCRIALD NEWYORK
Telephone
DI 4-4000

NYSE
Dept. [illegible] 29

Retn. Letter
Doyle Rat[illegible]
10/29/70

September 25, 1970

Dear Subordinated Lender:

This is to advise you that, in order to enable the New York Stock Exchange to provide direct or indirect assistance to Blair's customers, the Exchange today appointed Mr. Patrick E. Scoresa as liquidator for Blair.

You are invited to attend a meeting at 4:00 P.M. Wednesday, September 30, 1970, at 11 Wall Street, New York, N.Y., in the Board of Governors Room on the Sixth Floor. All of our subordinated lenders are being asked to attend this meeting in order to meet with Mr. Scorese and others for a discussion of the effect of the appointment of Mr. Scorese upon Blair and of the outlook for the firm.

I sincerely hope that you will be able to attend this meeting and I look forward to seeing you there.

Very truly yours,

James B. Ramsey, Jr.
President

JBR:jl

107

BLAIR & CO., INC.

20 BROAD STREET

NEW YORK, N.Y. 10005

Members
New York Stock Exchange
American Stock Exchange
Midwest Stock Exchange

Cable Address
OCRIALD NEWYORK

Telephone
DI 4-4000

NYSE

Dept. Exhibit 52

Witness

Ruth Gross
Doyle Reporting Inc.
10/27/75

September 25, 1970

Dear Subordinated Lender:

This is to advise you that, in order to enable the New York Stock Exchange to provide direct or indirect assistance to Blair's customers, the Exchange today appointed Mr. Patrick E. Scorese as liquidator for Blair.

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I sincerely hope that you will be able to attend this meeting and I look forward to seeing you there.

Very truly yours,

James B. Ramsey, Jr.
President

JBR:jl

108

Exhibit 1. Exhibit 1 is an accurate statement of all that.

THE WITNESS: Yes.

Q At the time you were working for the FBI, did you still maintain residence in Washington?

A I don't remember. Part of the time I was stationed in the State of Washington, so obviously I did then.

Q During the time that you were considering investment in Blair and up until the time you sent in the papers and the check on April 16, 1969, did you have any communication at all with Mr. Lendman?

A No.

Q Did you have any communication with Mr. Ramsey during that time?

A No. You mean directly?

Q Yes.

A No.

Q Did you have any indirect communication?

A Through Mr. Hepburn.

Q Could you tell me the substance of that?

A I have already testified to it. Shall I go through the conversation again?

Q Let's start with Mr. Lendman. Was there

MR. REILLY: I have no further questions of this witness.

MS. GITTELMAN: I have a few.

EXAMINATION

BY MS. GITTELMAN:

Q Mr. Stockwell, during the period from January 1969 until the present, did you continually reside in the State of Washington?

A Yes, I did; I have.

Q You also testified earlier that while you subscribe occasionally to The Wall Street Journal you do not remember whether you subscribed in 1969?

A I don't remember. I could have.

Q Would you have any records, a check to pay for t. subscription, that you could refer to?

A I ght or might not.

Q Would you endeavor to look for it?

A Certainly.

Q During the time that you were considering making this investment in Blair, did you have any direct communication with Mr. Ramsey?

A Well, in the substance of me writing him a letter or calling him, no. I think I saw material signed by Mr. Ramsey; that is, stockholder letters or

Officer?

A. There were none.

Q. When did you become the President of Blair?

A. I think it was November of 1967.

Q. Did you succeed someone else in that position?

A. Yes, I did.

Q. Who was that?

A. Herb Marache, Senior.

Q. As of the time you became President, is it true Mr. Vanderbilt was the Chairman of the Board?

A. Yes.

Q. Do you recall what Mr. Ramsey's job title was at that time or became at that time?

A. When I became President, you mean?

Q. Yes, sir.

A. He may have become Executive Vice President initially, I don't know for sure.

Q. Was there any change at all in the scope of your responsibility when you became President as contrasted with Executive Vice President?

A. Yes.

Q. What was that change?

A. The other departments reported directly

///

to me.

Q Did you have a reporting relationship with Mr. Vanderbilt?

A No.

Q Did you have a reporting relationship with anyone other than the full Board of Directors?

A Yes, the Executive Committee.

Q And who were the members of the Executive Committee, as best you recall, in the period of November of 1967?

A I don't remember the exact membership at the time, but I remember two Executive Committees, the first of which I was a part: Vanderbilt, Ramsey, Sullivan and Lendman. The second replaces Sullivan with B-u-e-l-t-m-a-n. I believe those were the two during the time that I served on the Executive Committee.

Q As I understand what your answer was: There were two executive committees, each of which you served on; is that correct?

A There was one; there was a change.

Q I see.

You did mention that there were two executive committees?

A No; what I meant was there were two during

anything that Mr. Hepburn told you that Mr. Lendman told him to tell you?

A I don't recall any.

Q Was there anything that Mr. Hepburn told you that he said Mr. Ramsey told him?

A He could have. My understanding was, when I talked to Mr. Hepburn, that he was speaking for Mr. Ramsey.

Excuse me, I may be wrong. Mr. Lendman would have been -- he was speaking for the president, whoever that was. Apparently Mr. Lendman was the president then. I didn't personally talk to Mr. Lendman.

Q Did Mr. Hepburn say in substance that he was speaking for the president?

A I believe that is the way he was introduced to me.

Q By whom?

A By Mr. McNell.

Q Did Mr. McNell say in substance that Mr. Hepburn spoke for the president?

A That was my understanding.

Q During this time, did you have any communication with Mr. Vanderbilt?

A I don't recall. Certainly no personal conversation.

not necessarily Mr. McNell, during the time when you were considering investing in Blair, up till April 15, 1969.

A Certainly. I will furnish them to my counsel.

Q Also during the same period, prior to April 15, 1969, did you have any direct communication with Mr. Lendman?

A No.

Q Did you have any direct communication at that time with Mr. Vanderbilt?

A I met Mr. Vanderbilt one time. Mr. McNell introduced me to him. I spent five minutes with him. We said hello, glad to meet you, and nothing about business matters.

Q Where was this?

A In his office.

Q Where?

A Blair & Company.

Q Do you remember the approximate date?

A Oh, it would have been probably in 1969.

Q Can you narrow down as to when in 1969? Was this prior to April 15, 1969?

A I would think it was later than that, but I am not certain of the date.

might have been out of town.

Q You don't recall?

A No.

Q Do you have any documents that indicate were you there in that period of time?

A I have a log book that I sometimes put down where I am and other times I don't.

Q Is that log book in your possession today?

A It could probably be resurrected from my office.

What year are you talking about?

Q 1969.

A I would doubt I would keep something as far back as that.

Q I will ask you if you will undertake to review your records and determine whether you have your log book for the years 1968, 1969 and 1970 and to furnish it to your counsel, and I in turn ask him to produce them to me pursuant to Rule 34 if they do exist.

MR. THOMAJAN: We will take the request under advisement.

Q Did there come a point when you became chairman of the Board of Directors of Blair & Compa

BEST COPY AVAILABLE

A Correct.

Q When was that?

A If somebody could suggest the year -- I don't know exactly what year it was.

Q What is your best recollection?

A I do know it was shortly after the death of the then-chairman of Blair & Company Joshua Davis.

Now, when that occurred --

Q Early 1960's?

A I would think later than that.

I could get that information for you. I don't want to speculate because I don't know exactly what date it was.

MR. THOMAJAN: If you leave a blank in the transcript, we will insert the date with the return of the signed transcript.

INSERT:

Q In the year 1968, Blair had an executive committee of its Board of Directors; is that correct?

A They did have an executive committee at some point in time; whether it was '68 or not, I don't recall.

Q You are a member of the executive committee?

committee outside directors?

A I don't believe so.

Q In addition to being chairman of the Board of Directors at some point in time, did you hold any other offices during your tenure in Blair? I am talking within Blair, not any affiliated organization.

A Well, I started with Blair as executive vice-president. Is that what you mean?

Q Would you trace for us what your path of advancement was through Blair to the point where you became chairman of the board?

A I started as executive vice-president and somewhere along the line I resigned from Blair because I was spending more and more time on the development and management of Capital Management Corporation; and then subsequent to that after Mr. Joshua Davis died, I was requested by a group of Blair directors to consider coming back into Blair, which I did, as chairman of the board.

Q Were you also chairman of the executive committee?

A No.

Q Who was chairman of the executive committee,

anything that Mr. Hepburn told you that Mr. Lendman told him to tell you?

A I don't recall any.

Q Was there anything that Mr. Hepburn told you that he said Mr. Ramsey told him?

A He could have. My understanding was, when I talked to Mr. Hepburn, that he was speaking for Mr. Ramsey.

Excuse me, I may be wrong. Mr. Lendman would have been -- he was speaking for the president, whoever that was. Apparently Mr. Lendman was the president then. I didn't personally talk to Mr. Lendman.

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LAW OFFICES OF
DAVIS, ARNEIL, DORSEY & KIGHT
605 DONEEN BUILDING
WENATCHEE, WASHINGTON 98801

HARVEY F. DAVIS
JAMES ARNEIL
DAVID J. DORSEY
HILBURN B. KIGHT

TELEPHONE
MOhawk 3-6153

April 16, 1969

NYSE
Deft. Exh. For ID 8
Plf. Exh. In ET
Walter Shapiro CSR
Doyle Reporting Inc.
10-28-75

REGISTERED MAIL
RETURN RECEIPT REQUESTED
AIRMAIL, SPECIAL DELIVERY

Mr. Thomas R. McNell
Blair & Co., Inc.
Broad Street
NEW YORK, N. Y. 10005

Dear Tom:

On behalf of Vern and me, we each enclose the following:

Three copies of New York Stock Exchange Long-Form Allied Member or Non-member Application.

Three copies of Stockholders Agreements with Exchanges.

Two copies of Collateral Agreement.

Three copies of Secured Note, with Annex.

Three copies of New York Stock Exchange Financial Supplement to Application.

The stock we are putting in is 4600 shares of City and 1000 shares of Servotronics each.

Vern says you have 2300 shares of City in his cash account. Enclosed herewith is an additional 2300 shares of City* plus 1000 shares of Servotronics,** which completes his stock contribution.

Enclosed from me are 2300 shares of City*. These certificates were issued before the two-for-one split and represents 4600 shares on today's market. I assume the right to receive the additional 2300 shares go with the enclosed stock certificates and that they represent 4600 shares at this time. I have 1000 shares of Servotronics in my account at Blair. Since there is no balance against this account, these shares are available to use for this transaction and I am enclosing an assignment of stock, if there is need for it, to take this 1000 snares from my account and deposit with Blair under this new arrangement. I am also enclosing an

* Cert. No. NC 154914 to NC 154941 incl.

** Cert. No. NC 130364 to NC 130371 incl, & NC 111424 to NC 111433 incl.

*** Cert. No. 111412

120

additional assignment covering the further 2300 shares of City in case it is needed. This completes my stock delivery.

I am also enclosing as a part of my application my original certificate of derivative citizenship. My father was born in Scotland, went to Canada as a young man, and I was born in British Columbia. At the age of five, I came to the State of Washington with my family, and my family was naturalized in 1931 prior to the time I became 21, thus entitling me to derivative citizenship. Please see to it that this certificate is promptly returned to me after it has served its purpose. I would think all that is necessary is that someone inspect it on receipt of these papers and that then it can be immediately sent back.

Incidentally, we attached Superior Court Clerk certificates regarding the notary to just the original and first carbon of the long-form application, since only two copies are filed with the Office of the Secretary. We assume Blair keeps the third copy and does not need such a certificate, but if it is needed we will acquire an additional one for each application.

Mr. Hepburn advised he would send us back either executed copies or photocopies of all the enclosures when they have been completed by the other signing parties. We have retained no copies and would each like to have a complete set.

We are also each enclosing checks for $15,000.00 for purchase of the Blair capital stock units.

Please review all of the enclosures to see if they are in order, and if anything needs changing give us a call and we can do whatever is necessary.

Best regards,

James Arnell

JA:rc
Enclosures

Purchase Fiber & Co
Capital stock units

4/15/69
19 ___ NO. ___

98-420
1251

PAY TO THE ORDER OF Hair & Co. $ 15000.00

Fifteen Thousand and no/100 DOLLARS

WENATCHEE VALLEY BRANCH
SEATTLE-FIRST NATIONAL BANK
WENATCHEE, WASHINGTON

JAMES ARNEIL, ATTORNEY

Jas. Arneil

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Walter Shapiro CSR
Doyle Reporting Inc.
10-25-75

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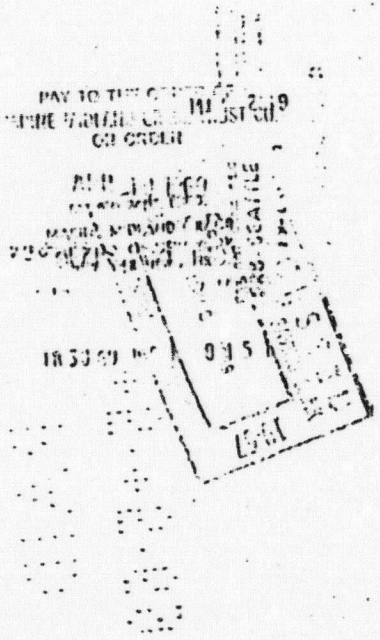

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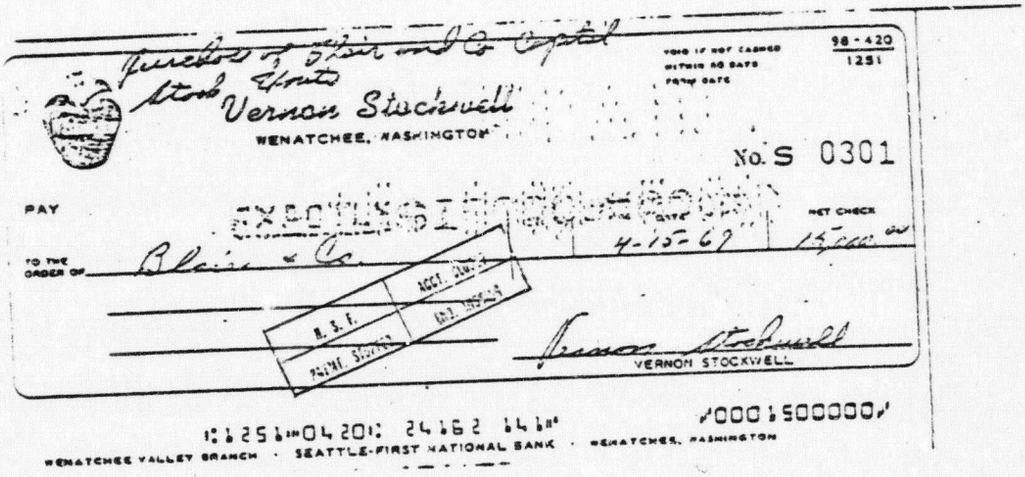

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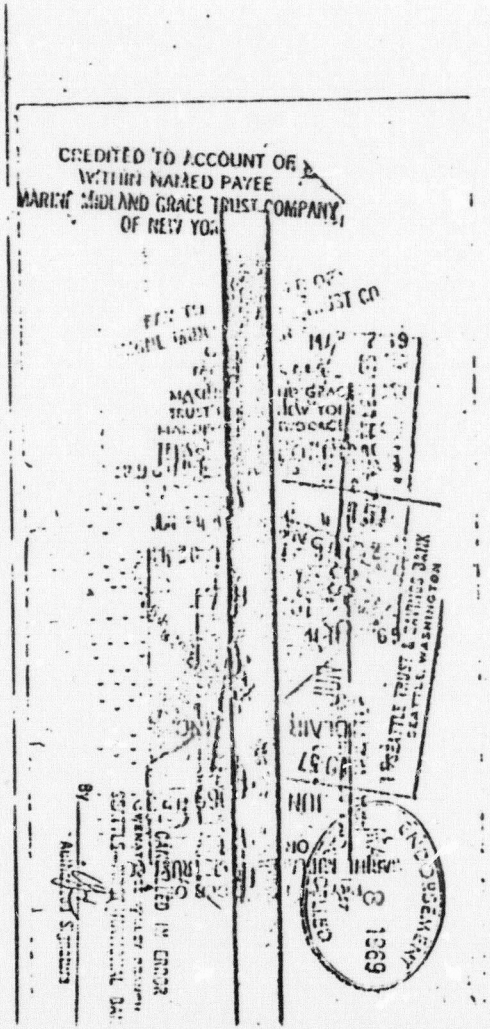
Doyle Reporting Inc.
10-28-75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OF NEW YO
ST CO
SEATTLE TRUST & SAVINGS BANK
1969

that context there was that type of conversation.

That conversation, however, did not relate specifically to the ultimate purchase. In other words, it was not a proposal then to buy stock of Blair along with subordinating account.

Q Before we get to the conversation which might more fairly be deemed directly relating to a proposal, were there any other similarly general conversations that you had with anyone concerning investing in Blair?

A As far as I know, there are just those mentions with Mr. McNell about his purchase of stock in Blair himself.

Q This was at least several months prior to March or April of 1969?

A Well, in that period; in that period. It might have -- Mr. McNell was there for some time and it could have been that from time to time while he was there he had mentioned his program of buying and the benefits that accrued to him and the other officer class, I suppose, or employees at Blair who also owned stock.

Q Do you recall how many of such general conversations you had with Mr. McNell?

A No. It was mentioned from time to time.

Q Did you have as many as a dozen?

A Oh, I couldn't say. I doubt that. I do doubt that.

Q There was more than one, you believe?

A The best I can tell you is in this period prior to the time of my actual subordination of the SDN account and prior to the time of specifically arranging for that particular account, Mr. McNell had discussed and made mention of the fact that he and his brother were buying stock in Blair and as one of the benefits of such a purchase they were permitted to participate in what he called private placements or dividends of some sort and that type of thing.

Q Did Mr. McNell say anything else to you on that subject?

A Well, that --

Q At that time.

A That he would like to arrange that I be able to and that Mr. Stockwell be able to make such purchases also but without being -- he had ascertained that, without being a stockholder in Blair, we would not have that privilege.

Q Did he say anything else?

A He may have, but that's the general substance of it.

Q Is there anything else that you can recall?

A In what connection?

Q In this connection.

A Well, that is the substance that I recall now, that general type of discussion.

Q Did he ask you whether you would be interested in becoming a stockholder of Blair?

A I don't know that he talked about it then because-- but if he did I think what he would have said was there wasn't any opportunity to.

Q Do you know why he even raised the subject at all, why he even mentioned the investments that he and his brother had made in Blair?

A I think he was just discussing what he himself was doing.

Q Did he say anything about how well or how poorly the investments were working out?

A My recollection is that they had all -- they had largely worked out quite well, that is, the initial purchase price was relatively low compared to what the stock would ultimately be publicly marketed for.

(Continued on page 45)

Q Did you have conversations of a similarly general nature with respect to investing in Blair at or about this time with anyone other than Mr. McNell?

A No.

Q Did you discuss it with Mr. Stockwell?

A Oh, I see. I could well have. I don't recall a specific conversation, but I could well have.

Q But in any event, you had no such conversations with anyone else representing Blair?

A The only possible exception would be with Mr. Sam McNell. I don't recall any.

Q Mr. who?

A Sam McNell, Tom's brother.

Q Do you recall any such conversation --

A No, I don't.

Q -- with Sam McNell?

A I do not.

Q Is it a possibility?

A It could be a possibility. I don't recall any.

Q Other than this general conversation or conversations, if there be more than one, with Tom McNell and possibly one with Sam McNell, as to which you have just testified, when next did you have any conversation with any one concerning your investment of any funds in

Blair, either by purchase of stock or secured demand note account?

A I would say within perhaps the two or three-week period prior to April the 2nd, 1969. That is my approximation. It might have been somewhat slightly before that, somewhere in the relatively short period prior to April the 2nd.

Q Would it be certainly during the month of March, 1969?

A Yes.

Q Sometime during that month?

A I would place it basically during the month of March. I won't say it didn't take place sooner.

Q Whenever it took place, whether during the month of March or perhaps shortly prior to March, with whom did you have any such conversation or communication?

A The number of people? The names of the people?

Q The names of the people.

A Mr. Tom McNell and Mr. Ben Hepburn. I believe it is H-e-p-b-u-r-n.

Q Anyone else?

A And Mr. Stockwell.

Q Anyone else?

A Are you including or excluding my wife, people

Q Have you seen Exhibits 2-A and 2-B before?
A This I believe to be copies of the documents sent by McNell, and I have read them if theyare so, if that is what they are.
Q Do you recall when you read them?
A Oh, it would have been at about the time that we signed the agreements for purchase of the stock.
Q Did you have any conversations with anyone with respect to those two exhibits?
A With Mr. Arnier and also perhaps with Thomas McNell, to the extent that he said he was sending them and that these would be copies. He wasn't sure what would be suggested to us would be identical. We were totally unfamiliar with this, and this was to give us as something to talk to Mr. Hepburn about.
Q Do you recall any conversation you had with Mr. Arnier with respect to those two exhibits?
A No, I don't, not specifically. We did talk about them. We had both read them. The notes upon them are as we perhaps discussed some parts of them. Perhaps the ones he has notes on them; I don't know.
There are things, in reading them over, we would rather have seen not there.
Q What other documents did you execute in

Q That is what you signed at that time?

A Yes.

Q Who first suggested to you that you consider investing in Blair either through the purchase of Blair stock or otherwise?

A Mr. Thomas McNell.

Q When did he do so?

A It would have been prior to our purchase.

Q I assume that, but can you indicate when?

A I would say within a month or six weeks prior to our purchase.

Q Was that during a telephone conversation?

A Yes.

Q Who initiated that call?

A I can't tell you. I placed calls to him on a collect basis. He called me at times. I wouldn't know which way.

Q Do you recall what he said?

A No. I wouldn't recall directly what he said and --

Q Did he tell you substantially what Mr. Arneil testified he told Mr. Arneil?

A He told me all of those things.

Q Did he tell you anything in addition to what

he told Mr. Arneil?

A Yes, I would think he did.

Q Will you tell me what he told you in addition to what he told Mr. Arneil?

A Well, my conversations, perhaps Mr. Arneil's also --

Q I didn't hear you.

A My conversations with Mr.McNell about -- now, this was not in regard to our purchase but about the stock of Blair, Inc. -- goes back somewhat further because Mr. McNell had been employed by Blair & Company I believe since sometime in 1964, in that area, and over the intervening years, which I guess would have been four or five, he had discussed at various time the certain private offerings which he had been buying but we couldn't buy.

He also had told me of how well these things had done for them, and so we talked of these things at various times. It was only shortly before our purchase that he told us that there was a possibility that we might at that time become eligible. The corporation was willing to accept certain of their accounts -- he called them "key accounts" -- or a particular good customer who would be offered a chance to participate in buying common shares or a package of shares which consisted of common

and preferred, along with subordinated debentures, and by so doing would be able to buy -- be able to become qualified to buy these private offerings and warrants and all the various goodies, fringe benefits which come along with ownership of stock of Blair.

This had been discussed prior to the time we were eligible, and it was discussed after he thought we had become eligible.

At that time he did then suggest that he would put us in touch with Mr. Hepburn so that we might discuss this with him in detail.

Q I would like to interrupt, please, and I do it only with a view to expediting this. All I really want to know is anything that you now recall that Mr. McNell told you in addition to what Mr. Arneil testified that he told Mr. Arneil, whether it be --

A Well, I would say this: My impression of what he told me as to how well these things had done, I seemed to have a better understanding or a greater understanding of how profitable this had been than Mr. Arneil testified to.

In addition to that, he told me that the reason Blair was accepting this additional capital was not because it needed capital. This was simply, in

effect, to accommodate certain key accounts and do them a favor, in recognition of their business and support of the organization an that this was to enable us to share in some of the profits being made by Blair because of those things.

Q Anything else you recall?

A Excuse me?

Q Anything else that you recall?

A I would say those were the two key things, the fact that they didn't need the money --

Q Whether they are key or not, do you recall anything else other than what you have already testified to?

A I don't at this time.

Q I am not sure from your answer what time frame you were referring to.

Is it correct you were referring to all the conversations you had with Mr. McNell prior to April 15th?

A Yes; and those regarding profitability would have gone back to periods prior to 1969, based on their own experience. Those regarding the matter of that Blair didn't need additional funds would have been very close to the time of our purchase. As a matter of fact, it was explained to me that the Schwabacher people were putting

since 1965?

A I don't believe so. In a personal capacity, you mean?

Q As his attorney.

A Well, let me ask you this. We are joint owners of two orchard corporations. I do work for those corporations on occasion when needed.

Q But you have not --

A But so far as Mr. Stockwell personally is concerned, I don't believe I have done anything for him since his will was prepared and that was ten or fifteen years ago. As far as I know, he has not called on anybody. I don't know.

Q Did you have any particular reason for transferring your account from Reynolds to Blair?

A Yes.

Q Can you tell me what the reason was?

A Our broker or registered representative that we dealt with was Tom McNell and he transferred his affiliation to Blair.

Q Had McNell previously been with E. F. Hutton?

A Yes.

Q And that is why, I assume, you moved your account from Hutton to Reynolds?

A That's correct.

Q In 1969 did you read the Wall Street Journal on a regular basis?

A No.

Q On any basis at all?

A Occasionally I have had several weeks' subscription on a trial basis. I don't recall whether I had one that year or not. It is quite infrequent that I take it.

Q I assume you do not read it currently?

A I do not. I read it occasionally but not currently; not regularly currently. If I am someplace where there is one there, I am quite likely to read it but that is infrequent.

Q I assume from that you do not buy it.

A I do not buy it.

Q That was true in 1969 so far as you recall?

A Other than the possibility -- I don't think I subscribed to it on a regular basis for many years. I used to many years ago. I would suppose that is ten or fifteen years ago.

Q Excuse me, had you finished your answer?

A Yes.

Q In 1969 did you consult or read any other financial publications, newspapers or other periodicals,

Q Mr. McNell left Blair & Company and went with, eventually, Shearson Hayden Stone.

A That's correct.

Q And your account went with him? I am not talking about every security, obviously, but the account generally.

A My account left Blair in around July of 1970 and I believe it went to Evans. I am not entirely clear in my own mind whether Mr. McNell, Mr. Tom McNell, left Blair at that time or some later time, but my account left at about that time.

Q In any event, it ended up at Shearson Hayden Stone with Mr. McNell?

A That is where it is now.

Q With Mr. McNell?

A With Mr. McNell.

Q Did you have more than one account at Blair?

A That is one of the firms I think -- it may be that Mr. Stockwell and I had a joint account.

MR. HANNAN: Again --

Q Other than the possible joint account with Mr. Stockwell, did you have any other accounts at Blair than your individual account?

A Again, I take it we are excluding the subordinated

Q You had made joint securities purchases?

A That's correct.

Q And that you maintained securities accounts jointly?

A We have at times, yes.

Q Do you have anything to add in that area as to any additional joint investments you made with him?

A No. I know of none other than what he mentioned.

Q Do you have any brokerage accounts at the present time?

A Yes.

Q With which firms?

A With Shearson Hayden Stone.

Q Is Mr. McNell the registered representative in charge of that account?

A Yes.

Q Do you have an account with any other firm?

A Not currently.

Q Did you have one with Kidder Peabody in San Francisco?

A I have that.

Q Was that at the same time that Mr. Arneil had one?

A Well, Mr. Arneil had one at the same time, although

Blair, either by purchase of stock or secured demand note account?

A I would say within perhaps the two or three-week period prior to April the 2nd, 1969. That is my approximation. It might have been somewhat slightly before that, somewhere in the relatively short period prior to April the 2nd.

Q Would it be certainly during the month of March, 1969?

A Yes.

Q Sometime during that month?

A I would place it basically during the month of March. I won't say it didn't take place sooner.

Q Whenever it took place, whether during the month of March or perhaps shortly prior to March, with whom did you have any such conversation or communication?

A The number of people? The names of the people?

Q The names of the people.

A Mr. Tom McNeil and Mr. Ben Hepburn. I believe it is H-e-p-b-u-r-n.

Q Anyone else?

A And Mr. Stockwell.

Q Anyone else?

A Are you including or excluding my wife, people

like that? I believe I discussed it with my wife. I recall nobody else.

Q In any event, certainly no one else associated with Blair?

A No.

Q How many such conversations did you have with Mr. McNell?

A I can't be precise, but several, I would say.

Q How many with Mr. Hepburn?

A One that I recall. One that was specific in that connection. There might have been one other in connection with filling out the -- what -- your Exhibit 1. But I don't specifically recall that. I won't rule it out, however.

Q The conversations that you had with Mr. McNell on this subject, were these in person or over the telephone?

A They were on the telephone. He would call me here, and I would be talking to him.

Q This was, I understand, probably at some time during the month of March, 1969?

A I would say that would be the most likely period. I know that they were included in the month of March.

Q It might have been perhaps even February, but

NEW YORK STOCK EXCHANGE
ELEVEN WALL STREET
NEW YORK, N.Y. 10005

JOHN J. MULCAHY JR
SECRETARY

July 3, 1969

Blair & Co., Inc.
20 Broad Street
New York, New York 10005

Attention: Mr. Benjamin H. Hepburn

Gentlemen:

I am pleased to advise you that the Board of Governors at its meeting today approved your application to admit Mr. Melville H. Ireland as an allied member of the New York Stock Exchange and a holder of voting and contributor of a secured demand note, effective July 3, 1969.

This will also advise that the Board approved your applications to admit Messrs. James Arneil and Vernon A. Stockwell as holders of non-voting stock and contributors of secured demand notes, effective July 3, 1969.

Very truly yours,

John J. Mulcahy Jr.

not come.

Q I believe you indicated earlier as to Mr. Hepburn there was only one communication that you can recall today, that is the one of April 2?

A Other than possibly one in connection with completion of these documents.

Q In any event, let's take the one of April 2. That was the first one you had with Mr. Hepburn, and I understand that you and Mr. Stockwell were on the telephone in your office in Washington.

A Wenatchee, Washington.

Q And that Mr. Hepburn was on the telephone here in New York, and perhaps Mr. McNeil introduced you by telephone?

A That's correct.

Q In other words, there was no "perhaps" about it?

A No, I said that is correct. I did not say "perhaps." I said, "That's correct." Or did you say "perhaps"?

Q I did; and I thought I had inaccurately characterized your testimony.

Would you tell me the substance of what was said by each of the four of you during that conversation on April 2nd?

either of you during any such conversation?

A Not specifically at this moment.

Q Even generally, and I am only asking the substance; I am not asking for exact words.

A You are entitled to know if I did and can remember what was said, and I can't tell you any more.

Q That's all right.

A I just feel that there were such conversations.

Q I accept that.

A And I am not trying to be evasive about it.

Q I know you are not.

Other than such conversation with Mr. McNell as to which you have no better recollection, were there any conversations with anyone else --

A No.

Q -- representing Blair during this period of time?

A No. I don't think I talked to anybody else other than Mr.McNell and Mr. Hepburn concerning this transaction.

Q And you testified, so far as you can presently recall as to those conversations?

A That's correct.

Q Did you have any conversations with Mr.

like that? I believe I discussed it with my wife. I recall nobody else.

Q In any event, certainly no one else associated with Blair?

A No.

Q How many such conversations did you have with Mr. McNell?

A I can't be precise, but several, I would say.

Q How many with Mr. Hepburn?

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Q This was, I understand, probably at some time during the month of March, 1969?

A I would say that would be the most likely period. I know that they were included in the month of March.

Q It might have been perhaps even February, but

A With my check for the purpose of approval in New York.

Q So that as of April 15th whatever investment you had made, it was done?

MR. HANNAN: Excuse me; I object to that, insofar as it calls for a conclusion of law. There was not an investment made or other purchase made at that date. I instruct the witness not to answer.

THE WITNESS: Well, O.K.

Q Can you be any more specific as to the number of conversations you had with Mr. McNell during the period prior to April 15, 1969 concerning your investment in Blair or the purchase of securities of Blair, or the subordinating of your account with Blair?

A It would just be speculation. There were certainly several.

Q I understand, in any event, they were all by telephone?

A That's correct.

Q Mr. McNell was on the telephone in New York and you were on the telephone in the State of Washington?

A That's correct.

Q Can you tell me what Mr. McNell said during the first of such conversations?

not come.

Q I believe you indicated earlier as to Mr. Hepburn there was only one communication that you can recall today, that is the one of April 2?

A Other than possibly one in connection with completion of these documents.

Q In any event, let's take the one of April 2. That was the first one you had with Mr. Hepburn, and I understand that you and Mr. Stockwell were on the telephone in your office in Washington.

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Q And that Mr. Hepburn was on the telephone here in New York, and perhaps Mr. McNeil introduced you by telephone?

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A No, I said that is correct. I did not say "perhaps." I said, "That's correct." Or did you say "perhaps"?

Q I did; and I thought I had inaccurately characterized your testimony.

Would you tell me the substance of what was said by each of the four of you during that conversation on April 2nd?

(Securities Exchange Act Release No. 8677) ADMINISTRATIVE PROCEEDING
FILE NO. 3-1635

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
August 28, 1969

In the Matters of	
SCHWABACHER & CO. 100 Montgomery Street San Francisco, California	FINDINGS, OPINION AND ORDER
(8-3913)	
ALBERT E. SCHWABACHER, JR.	
Securities Exchange Act of 1934 - Sections 15(b), 15A and 19(a)(3)	

In these proceedings pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 ("Act"), an offer of settlement was submitted by Schwabacher & Co. ("registrant"), a partnership registered as a broker-dealer, and Albert E. Schwabacher, Jr., the senior general partner and chief executive of registrant. Under the terms of the offer, respondents waived a hearing and post-hearing procedures, and, without admitting the allegations of the order for proceedings, consented to findings of willful violations of the record-keeping, hypothecation, and reporting provisions of the Act and rules thereunder as alleged in such order. Respondents further consented to the entry of an order censuring them, prohibiting Schwabacher from undertaking certain supervisory functions, and imposing various terms and conditions. 1/

After due consideration of the offer of settlement and upon the recommendation of our staff, we have determined to accept such offer. On the basis of the order for proceedings, the offer of settlement, and certain materials attached to the offer, we make the findings set forth below.

Violations of Record-Keeping, Hypothecation, and Reporting Provisions

Between January 1, 1966 and July 11, 1968, when we issued our order for proceedings, registrant, willfully aided and abetted by Schwabacher, willfully violated Section 17(a) of the Act and Rule 17a-3 thereunder in that registrant failed to make or keep current a large

1/ Respondents' offer of settlement recited that no fact stated therein constitutes an admission by them in any other proceeding except to the extent that it may lawfully be considered by the Commission as to them in any subsequent administrative proceeding pursuant to Sections 15(b), 15A and 19(a)(3) of the Act and Section 203(d) of the Investment Advisers Act of 1940.

BEST COPY AVAILABLE

number of the books and records relating to its business. 2/ During the same period, registrant, willfully aided and abetted by Schwabacher, willfully violated Section 8(c) of the Act and Rule 8c-1(a)(2) thereunder in that it hypothecated and permitted the hypothecation of securities carried for the accounts of customers under circumstances permitting such securities to be commingled with securities carried for the accounts of persons other than bona fide customers under liens for loans made to registrant. In addition, registrant, willfully aided and abetted by Schwabacher, willfully violated Section 17(a) of the Act and Rule 17a-5 thereunder in that it failed to file timely reports of its financial condition for the years 1966 and 1967, and those reports, when filed, were not duly certified.

In January 1966, registrant converted its bookkeeping operations to the Midwest Service Bureau's computerized accounting system. In April 1966 it was reported to the New York Stock Exchange, of which registrant was a member, that the conversion was not as smooth as registrant would have liked. An audit by the Exchange disclosed in October 1966 that short security differences were almost $14,000,000, indicating a substantial failure to keep accurate records. This figure was reduced within about 11 days to $3,700,000 and substantial capital was contributed to assure compliance with the Exchange's minimum capital requirements. Because of the differences, completion of the audit was delayed and answers to a regular financial questionnaire were not received until March 1967 and showed differences of $2,376,757 and securities not properly segregated of $6,866,910.

Despite special efforts over the two next years to correct past differences and prevent new ones, there continued to be a failure to maintain current records that were in balance and reasonably accurate. Thus, an Exchange examiner who visited registrant in September 1967 submitted a report listing a large number of record-keeping deficiencies. 3/ A further examination by the Exchange in November 1968

2/ The books and records that were not made or maintained consisted of blotters or other records of original entry; records reflecting all assets and liabilities, income and expenses and capital accounts; records itemizing separately, as to each cash and margin account of customers and of registrant and its partners, all purchases, sales, receipts, and deliveries of securities and commodities for such account, and all other debits and credits; records reflecting securities in transfer, dividends and interest received, securities borrowed or loaned, monies borrowed or loaned and the collateral therefor, and securities failed to receive or deliver; a record reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by registrant for its account or for the account of its customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried; and records in respect of each cash and margin account containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner.

3/ The deficiencies consisted of out-of-balance conditions, errors in submitting financial questionnaires, commingling of partner and customer securities in registrant's safekeeping box and in bank

CONTINUED

disclosed approximately 31,000 record-keeping errors, more than $7½ million of fails, and inaccuracies by as much as $6 or $7 million in monthly fail figures reported to the Exchange. In addition, dividend condition could not be determined, record-keeping control over a major bank account had been lost, and ten suspense accounts in registrant's New York Office were similarly out of control.

Beginning in February 1968, the Exchange placed various restrictions on registrant because of its "inability to handle its business on an operationally sound basis." Additional restrictions were imposed at the suggestion of our staff in July and August 1968, and restraints were also voluntarily adopted by registrant in response to Exchange inquiries or to assure compliance with the restrictions. Included were prohibitions against the opening of new branch offices, advertising, and the conducting of investment classes, as well as restrictions on new registered representatives, new accounts, margin accounts and required margin, trading activity, underwriting originations, bidding commitments and participations, lending of securities, and partnership withdrawals.

In October 1968, the Exchange determined that registrant's business had to be further reduced, and in early December placed a December 15 deadline for registrant's decision either to merge with another firm or sell a number of branch offices. By that date, arrangements for a merger with Blair & Co., Inc., a registered broker-dealer, were completed, and since February 28, 1969, operations of registrant have been under the supervision of Blair executives. 4/ Pursuant to a settlement in April 1969 of disciplinary proceedings brought by the Exchange in which registrant and its general partners, for the purpose of settlement only, admitted violations of rules of the Exchange and this Commission with respect to books and records, segregation and hypothecation, supervision and control, good business practice, and

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3 Continued/

loans, excessive "edits," representing errors disclosed by the Midwest system's computer, inadequate attention to customers' unsecured debits and short positions, inordinate delays in COD deliveries and payment of customers, laxity in transfer in cases of sales of non-negotiable securities, security count differences, undersegregation in margin accounts, failure to segregate fully paid-for securities in cash accounts, deficiencies in accomplishing shipping instructions, delays in margin department release of transfer instructions and cage processing of transfer instructions and segregation instructions, unauthorized release of segregated securities, lack of control of excessive fails, unreconciled clearing house accounts and broker accounts, a breakdown in new accounts procedures resulting in loss of control of commingling of customer securities without consent in bank loans, unreconciled suspense accounts, and loss of control of the dividend department.

4/ At about that time, according to the Exchange, registrant had 15 branch offices, 33 general partners, 13 limited partners, 193 registered representatives, 612 operational and other personnel, and approximately 24,260 active customers' accounts, of which 4,239 were margin accounts.

On May 6, 1969 the Exchange determined, on the basis of improvements in operation conditions of registrant, to modify the restriction against approval of new registered representatives and to rescind the restriction on underwriting activities.

audits, registrant was fined $50,000, and Schwabacher was fined $25,000 and censured. In addition, Schwabacher agreed that he would not undertake any supervisory duties with respect to back-office operations of any Exchange member for five years without prior approval of the Exchange.

Public Interest

A firm's obligation to investors to conduct its securities business on a sound basis requires that it be sensitive to any back-office problem as soon as it arises, and take prompt and effective steps to bring itself into compliance with applicable rules and, if necessary to prevent further delinquencies, to curtail activities not essential to providing service to existing customers. The maintenance of the back-office mechanisms and their relation to the firm's overall operations must be the subject of constant close attention, in order to insure that customers' interests are being served and protected. A failure to effect prompt handling of all record and delivery requirements not only imposes substantial risks on the firm's own customers but also on those of the broker-dealers with whom its transactions are entered into. It tends to have a chain effect which can compound the delays and risk of injury and adversely affect investor confidence in the securities market. The increasingly severe restrictions imposed to correct registrant's continuing back-office deficiencies, even to the extent of requiring the firm either to merge with another firm better prepared to deal with them or to reduce the number of its branch offices, reflect the serious concern with which such deficiencies are viewed and the importance of a broker-dealer firm's recognition of the full magnitude of the problem.

The offer of settlement in the instant proceedings provides that we may censure respondents; require registrant, as a division of Blair, to continue making its weekly report of condition to our San Francisco Regional Office and to the Exchange (such reports may be consolidated); continue the existing restrictions upon registrant; 5/ reserve the right to reinstitute these proceedings, upon five days' written notice, in the event of a breach by registrant of any of such restrictions which has not been corrected within the notice period, provided that the occurrence of the breach shall be an issue to be determined at a hearing; and prohibit Schwabacher from undertaking any duties with respect to supervision of back-office operations of any broker-dealer without prior Commission approval. The offer further states that while Schwabacher, for the year beginning March 1, 1959, may be a vice-president of Blair, as one of 12 or 13 members of its Corporate Finance Department, his duties would not be of a supervisory nature. 6/

5/ Registrant or Blair may apply to us at any time for removal or modification of the restrictions. Respondents represent that while the restrictions were of material assistance in the resolution of the operational difficulties which resulted in the instant proceedings, they believe that such restrictions are no longer necessary.

6/ Respondents represented it was their understanding that Blair, as registrant's successor, would make appropriate representations or undertakings to the Commission necessary to continue the jurisdiction of the Commission with respect to registrant, including undertakings requiring the submission of weekly reports and permitting the reinstitution of proceedings in the event that the operations or books and records of the Schwabacher division of Blair materially deteriorate. Blair has submitted a statement to the Commission in conformance with respondents' understanding.

Respondents urge in mitigation that registrant's accounting problems began with its conversion in January 1966 to the Midwest system during a period of unprecedented increases in the volume of market activity, and were compounded by the difficulty in locating and engaging competent operations personnel experienced in that system; that in December 1968, six of registrant's partners obtained a bank loan of $3 million which they loaned to registrant as new capital on a subordinated basis; and that the acquisition of registrant by Blair resulted in the loss of registrant's independence and autonomy and terminated a 50-year-old firm that had played a responsible financial role in the West. They further stated that the totals of fails to deliver and fails to receive have shown substantial improvement over the last seven months; 7/ that progress has been made in the suspense account arising from the August 30, 1968 audit; 8/ that the cashier department has been completely reorganized and, among other things, processes customer complaints on a current basis; that the number of Midwest system "edits," reflecting both current errors and historical errors which have not been completely corrected, has shown improvement over the past several months; 9/ and that control of current operations has been achieved by implementing procedures which monitor problem areas and by taking action to correct any errors thus revealed. 10/

Under all the circumstances, including the disciplinary action already taken against respondents by the Exchange, and giving due consideration to the recommendations of our staff, we think it appropriate in the public interest to dispose of the proceedings in accordance with the offer submitted and impose the sanctions permitted by such offer.

7/ Fails to deliver were $28,665,000 for the week ending August 30, 1968, compared to $7,106,000 for the week ending April 3, 1969. The corresponding figures for fails to receive were $18,096,000 and $7,522,000.

8/ Suspense items were long $9,578,000 and short $8,580,000 for the week ending September 13, 1968, compared to $1,681,771 long and $1,040,511 short for the week ending April 3, 1969.

9/ There were 30,153 "edits" for the week ending October 18, 1968, compared to 15,340 "edits" for the week ending April 3, 1969. Registrant, acknowledging that "edits" should number less than 10,000 per week, states that in view of certain projects that are planned, reductions in the number of "edits" are expected to continue.

10/ Cited by respondents as among the most significant of the programs installed to assure current control of operations are a procedure assuring the current balance and control of trading activities on all exchanges and the over-the-counter market; the daily processing of the basic "edit" used to maintain control of cash and securities entries to the computer records; a weekly box count of all securities in the active box in both the San Francisco and New York offices; and a daily reconciliation of bank balances in both the cashier's and the accounting department's records.

Accordingly, IT IS ORDERED that respondents be and they hereby are, censured, that Albert W. Schwabacher, Jr. be, and he hereby is, prohibited from undertaking any supervisory duties with respect to back-office operations of any broker-dealer without prior approval of the Commission, and that the other terms and conditions specified in the offer of settlement be, and they hereby are, imposed.

By the Commission (Chairman BUDGE and Commissioners OWENS, WHEAT and SMITH), Commissioner NEEDHAM not participating.

Orval L. DuBois
Secretary

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THE WALL STREET JOURNAL

August 29, 1969

Schwabacher Censured By SEC; Chief Barred From Some Operations

Action Against Firm, Now Held by Blair & Co., Based on Findings Of Violations From 1966 to 1968

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — The Securities and Exchange Commission censured Schwabacher & Co., and prohibited Albert W. Schwabacher Jr., its chief executive, from supervising back-office operations of any broker-dealer without commission approval.

The SEC said the censure is based on findings that between January 1966 and July 1968 the San Francisco broker-dealer violated Federal securities law by failing to keep accurate records.

Schwabacher & Co. was acquired earlier this year by Blair & Co., at the urging of the New York Stock Exchange, after Schwabacher became mired in back-office problems.

The SEC said Schwabacher consented to the censure and to the findings without admitting the allegations. The censure was included in a settlement offered by Schwabacher and accepted by the SEC.

The commission's order followed a series of earlier actions by the Big Board to restrict Schwabacher's operations. The exchange, in February 1968, said the restrictions were necessary because of the firm's "inability to handle its business on an operationally sound basis."

In December 1968, the exchange ordered Schwabacher to merge with another firm or to sell a number of its branch offices. Blair & Co., New York, acquired Schwabacher in February 1969, and Schwabacher has been under Blair's supervision since that time.

In April 1962 the exchange fined Schwabacher & Co. $50,000; Mr. Schwabacher was fined $25,000, censured, and ordered not to supervise back-office operations of any exchange member for five years without prior approval of the exchange.

The SEC said Schwabacher agreed to the disciplinary settlement and, for the purpose of settlement only, submitted to violations of the rules of the exchange and the SEC with respect to the failure to keep accurate records and a lack of adequate supervision and control over back-office operations.

Cleaning Up the Problem

In New York, a spokesman for Blair & Co. said more than 90% of Schwabacher's back-office problems have been "cleaned up." These problems, he added, involve fails to deliver stock and missing records on specific stock trades [illegible]

"We have a team of its accountants and auditors working on the problems and should be current at Schwabacher before the end of the year," the spokesman said.

In San Francisco, a spokesman for Schwabacher said the problems leading to SEC action were committed "unintentionally and inadvertently" and were the type that many other brokerage firms are experiencing.

Mr. Schwabacher was reported on a wilderness pack trip into Wyoming and Montana and isn't expected back until the end of next week.

The Blair spokesman said that Mr. Schwabacher is currently a Blair stockholder and a member of Blair's new business department, handling underwritings and offerings "but isn't involved in back-office operations in any way." Mr. Schwabacher, formerly managing partner of Schwabacher & Co., is now a senior vice president for Blair.

The SEC said that in January 1966 Schwabacher converted its bookkeeping operations to a computerized accounting system. In April 1968 the firm advised the exchange that the transition hadn't gone smoothly.

An audit of the firm's books in October 1968 disclosed that the firm couldn't account for $14 million of securities it was owed by and supposed to collect from customers and other brokerage firms, the SEC said. The commission said this indicated a substantial failure to keep records.

The commission also charged that the firm wrongfully pledged customers' securities as collateral for loans from banks.

According to the SEC, Mr. Schwabacher "willfully aided and abetted" the firm in its alleged violations.

Despite special efforts over the next two years to correct past differences and prevent new ones, the SEC said, the firm still failed to maintain current records.

According to the SEC, Schwabacher said its conversion to computerized accounting came at a time of sharp increases in the volume of market activity, and that it had made substantial efforts to correct its deficiencies.

Weekly Reports Required

In addition to censuring Schwabacher, the commission said it will require the firm, as a division of Blair, to continue to make weekly reports of its financial condition to the commission's San Francisco regional office. The commission's order also prohibits Mr. Schwabacher from assuming supervisory duties at Blair.

Blair's acquisition of Schwabacher gave Blair 15 branches on the West Coast. However, Blair closed four of the offices last week in an effort to eliminate unprofitable or marginally profitable branches.

A Blair official said the 11 branches still operate under the Schwabacher name, although Blair plans to place them under its name soon.

The exchange and the commission arranged Schwabacher's absorption by Blair in order to protect Schwabacher's customers. In its order the SEC stressed the importance of preventing back-office problems which may "adversely affect investor confidence in the securities market."

154

BLAIR & CO., INC.

20 BROAD STREET
NEW YORK, N.Y. 10005

Members
New York Stock Exchange
American Stock Exchange
Midwest Stock Exchange

Cable Address
OCRIALD NEWYORK
Telephone
DI 4-4000

NYSE
Deft. Exh. For ID -23
~~Pltf. Exh. In Ev~~
Ruth Gross
Doyle Reporting Inc.
10/29/75

March 24, 1970

Dear Stockholder:

The Board of Directors has approved a plan for the Corporation to obtain a substantial amount of badly needed senior capital on a long-term basis.

The absence of any book value for either the Preferred Stock or the Common Stock makes it impossible at the present time to sell stock of the Corporation for more than a nominal price. Accordingly, the plan provides for granting to the senior capital lenders options to purchase our stock for a period of up to five years (a) at a price of $28 for a unit of one share of $4 Preferred Stock and three shares of Common Stock, if an option on Capital Management shares is elected (see below), or (b) at a price of $29 for a unit of one share of $4 Preferred and four shares of Common Stock if the Capital Management option is not taken. Each option holder may also be given the right, during the life of his option, if securities of any kind are sold by Blair before the expiration date, to purchase additional securities of the kind sold bearing the same proportion to the amount of the securities sold as the number of shares of Common Stock purchasable under his options bears to the total number of shares of Common Stock outstanding plus the number of other options outstanding upon completion of the current financing plan. The purchase prices and the number of shares purchasable will be subject to adjustment under anti-dilution provisions.

Before the Corporation may issue for cash any capital stock to a person who is, or as a result of such issuance would be, a holder of more than five percent of the outstanding Common Stock, or issue to any one person for more than $200,000 any shares of capital stock, such shares must first be offered to the holders of outstanding

G80

Common Stock pro rata. For purposes of the controlling provision (contained in Division E of Article IV of the Certificate of Incorporation), the granting of rights or options to purchase capital stock is deemed to be the issuance of the shares of capital stock which may be purchased on exercise of the options. Since it is anticipated that certain of the senior capital lenders will receive options to purchase more than five percent of the outstanding shares of Common Stock, the Board of Directors has proposed and declared advisable, and the stockholders are being asked to approve, an amendment to the Certificate of Incorporation which will exempt from the pre-emptive rights provision the options to purchase Blair shares, and the Blair shares which may be purchased, pursuant to the option agreements.

The granting of these options is essential in order for the Corporation to obtain the senior capital presently needed. It should be remembered that as late as June 1969 our outstanding Common Stock, exclusive of treasury shares, numbered approximately 203,600 shares, whereas the currently outstanding number is approximately 151,000. Accordingly, it would be necessary to sell more than 50,000 shares of Common Stock before the number outstanding in June 1969 is again reached.

It is probable that at the time of exercise of any of the options to purchase Blair stock the book value of the stock will be higher than the exercise price. Accordingly, it will be necessary for the holders of two-thirds of the outstanding Voting Common Stock to consent to the issuance of stock upon exercise of the options. If you are a holder of Voting Common Stock, your execution of the enclosed Consent of Stockholder will also be a consent by you, pursuant to paragraphs (d) and (e) of Article X of the Certificate of Incorporation, to the possible issuance of such shares at a price lower than book value.

Certain of the individuals who were Blair stockholders in October 1968 are beneficial owners of shares of capital stock of Capital Management Corporation ("Capital Management"), a corporate affiliate of Blair, which are held of record by Blair under Deposit Agreements dated October 23, 1968. These beneficial owners are being asked to consent to the granting of certain options on these Capital Management shares to the senior capital lenders in addition to the options which such lenders will have to purchase securities of Blair. The optionees who elect to take the options on Capital Management stock will receive options on a substantially smaller number of shares of Blair stock than they would have received

if they had elected to receive options only on Blair stock. If you are a beneficial owner of Capital Management stock, there is enclosed herewith a form of Consent to the execution and delivery of the option agreements relating to the Capital Management stock.

On the basis of negotiations to date, it is expected that a substantial portion of the senior capital under the current plan will be obtained from persons who at the present time are not stockholders of the Corporation. However, we will be most happy to hear from any stockholder who up to this point has not indicated an interest in investing additional senior capital, either through the subordinated lending of securities or the purchase of subordinated debentures for cash. If you have such an interest, please contact Mr. Vanderbilt, Mr. Ramsey or Mr. Hepburn as soon as possible. Because of the complexity of the agreements to be entered into with the senior financial lenders, it is not practical to consider entering into such agreements with persons interested in lending less than $100,000 of senior capital.

You are hereby requested to sign and date the enclosed Consent of Stockholder (and the Consent as a beneficial owner of Capital Management stock, if you are also such an owner), and return it promptly in the enclosed-self-addressed return envelope.

Very truly yours,

BLAIR & CO., INC.

By: B. H. Hepburn
B. H. Hepburn
Vice President & Secretary

000231

BEST COPY AVAILABLE

Exhibit 23 a letter on Blair's letterhead dated March 24, 1970, consisting of three pages.

(Three-page letter dated March 24, 1970 on Blair's letterhead was marked NYSE Exhibit No. 23 for identification, as of this date.

Q I show you Exhibit 23 for identification and ask if you ever saw that before.

MR. HANNAN: That is not among the documents produced from their file.

MR. REILLY: That is not what I asked. I asked if he had ever seen it before. I am just asking if he had seen it before, that or the original of it or another copy of it.

A I don't recall ever seeing this before.

Q May I have it, please?

A Yes.

Q Did you in or about March of 1970 receive in any other form substantially similar information as is contained in Exhibit 23?

A The only thing -- the answer is no, not that I have any recollection of.

Q Did you have any discussion with anyone, Mr. Stockwell or Mr. McNell or anyone else, of substantially similar information as is set forth in

Exhibit 23?

A The only recollection I have of the nature of the problem with Blair, if that is what you are talking about, is Mr. McNell's comment to me about their difficulties in working out the bugs of the computer accounting.

Q As to which you testified before?

A Yes, on the Midwest Exchange, or whatever it was.

Q I believe you indicated that the next communication other than your periodic statements and general conversations with Mr. McNell is reflected in a letter of August 5 and a telegram of August something; is that what you indicated before?

A The next after what?

Q After April was what I had asked you before.

A Well, I told you I was sure I had talked to Mr. McNell on my return concerning the information that Mr. McNell gave Mr. Stockwell.

Q All right. Will you tell me now what the approximate date of that was, the end of July, 1973?

A Whenever I came back. I don't remember just when that was. I suppose it would be around that area.

Q Will you tell me now what you said to Mr. McNell and what he said to you in this conversation?

A I can't be specific about the conversation other

Q We are talking about April, May June, that time, roughly?

A I would think so, yes.

Q Did Mr. McNell indicate to you during any of your conversations concerning the possible purchase of stock of Blair the basis on which the purchase price would be computed?

MR. HANNAN: Of the stock?

MR. REILLY: Yes.

Q Either common or preferred.

A I think that discretion all occurred with Mr. Hepburn.

Q And Mr. Hepburn said you would be paying what?

A Book value.

Q Book value?

A Yes, that was the price on the common stock and that was the reason we didn't know how many shares we got. If we buy, we would pay a fixed amount and the number of shares would be determined by the price per share, but that wasn't known at that time.

Q I show you Exhibit 23 and ask whether that is a copy of a letter you received on or shortly after the date it bears.

A I received the letter. I was a nonvoting shareholder and --

Q All I am asking is whether you received that on or shortly after the date it bears.

A Yes.

Q When you received it, did you read it?

A Yes.

Q Did you, after reading it, raise any question with Mr. McNell or anyone else at Blair with respect to the absence of book value for either preferred or common stock?

A Well, I talked to Mr. McNell about it, certainly.

Q Mr. McNell?

A Yes.

Q With anyone else?

A No.

Q With Mr. Arneil?

A Yes, I'm sorry. I would have talked to Mr. Arneil about it. As a matter of fact, any of these conversations which I have mentioned, the content of them would have been discussed with Mr. Arneil.

Q Do you recall the substance of what you said to Mr. McNell and what he said to you on this subject?

A I certainly raised the question with Mr. McNell

BLAIR & CO., INC.
20 BROAD STREET
NEW YORK, N.Y. 10005

Members
New York Stock Exchange
American Stock Exchange
Midwest Stock Exchange

Cable Address
OCBLAIR NEWYORK
Telephone
DI 4-4000

August 5 , 1970

NYSE
Deft. Exh. For ID 24
Doyle Reporting Inc.
10/29/71

Mr. James Arneil
921 Bryan Street
Wenatchee, Washington 98801

Dear Mr. Arneil:

Under the Collateral Agreement between us you have pledged certain securities as collateral for a secured demand note, thus effecting a subordinated loan to Blair for use by it as technical capital for purposes of the capital requirements of the New York Stock Exchange and as working capital, if needed.

It is expected that a working capital deficiency will develop within the next few days, due primarily to the following factors, which are more fully discussed in a later part of this letter: (i) a sharp reduction in the income of the firm without a corresponding decrease in operating expenses, (ii) the expectation that a substantial amount of cash will be required to enable Blair to transfer customer' accounts to other firms, and (iii) other general working capital requirements. With this in view, it has become necessary that we take action to convert the collateral for outstanding secured demand notes into cash. Although securities pledged as such collateral are available for repledging as security for loans obtained by the Corporation from banks or other lenders, normally a maximum of 35% of market value can be borrowed on securities in this category, so that in order to obtain the maximum amount of working capital that can be provided, the securities must be converted into cash. Accordingly, we hereby make demand for payment of your secured note in principal amount equal to the market value of the securities and cash included in the collateral therefor. Presentment of the secured note is being made at our office at 20 Broad Street, New York

New York. If the secured note is not paid, the securities included in the collateral will be sold and the proceeds of such sale (together with any cash included in the collateral) will be applied to the payment of the secured note. Please advise Raymond B. Vreeland at our 20 Broad Street office immediately by wire or telephone if you propose to pay all or part of the secured note in cash and to withdraw the securities or any part thereof. If, by 9:30 AM, Eastern Daylight Time, on August 7, 1970, you have not paid the secured note in cash or made arrangements satisfactory to us for such payment, we will sell all your collateral securities. A debenture in the form annexed to your collateral agreement will be issued to you for the amount of the secured note paid either upon withdrawal of the securities by you or upon the sale thereof.

You are no doubt familiar with the troubles experienced in recent months by brokerage firms such as Blair whose business is heavily concentrated in the retail area. For the last 14 months we have experienced a continual heavy capital drain. Despite our efforts to remain in compliance with the minimum capital requirements of the New York Stock Exchange the point was recently reached at which our capital did not meet those requirements. At that point, the New York Stock Exchange subjected us to various operating restrictions. More recently, the Exchange has ordered Blair to divest itself of its branch office system. Current plans call for the sale of a large number of offices to Thomson & McKinnon Auchincloss Inc., on or about August 10, 1970, and transfers, most of which are in progress, to various other firms of most of the other branch offices. Branches which cannot be sold are being closed.

In April, 1970, over $11,[illegible]0,000 of collateral for secured demand notes was converted into cash, thereby providing additional working capital and also increasing by more than $3,000,000 the technical capital of the firm under Rule 325 of the New York Stock Exchange. It was hoped that such conversion, together with about $2,800,000 of collateral for newly contributed secured notes obtained in early April, 1970, would provide the firm with ample capital to see it through the difficult period and permit the organization to be kept intact and in position to take advantage of any upturn in business. Unfortunately, the upturn did not occur and our capital drain continued.

The New York Stock Exchange recently notified us that no capital funds (whether evidenced by stock, subordinated debentures, subordinated loans or otherwise) are to be returned to the contributors without the prior written approval of that Exchange. The collateral of certain secured demand note contributors had been scheduled for return pursuit to notices given

in accordance with their collateral agreements with us. It is our view that the initiation of proceedings to force the return of capital to any investor might, if the investor were successful, result in suspension of the firm as a member of the New York Stock Exchange and cause the destruction of the values remaining in Blair including the accumulated tax loss carryfoward of more than $14,000,000. In this connection, we wish to point out that the Collateral Agreement requires that any controversy arising out of or relative to that agreement must be submitted to arbitration pursuant to the Constitution of the New York Stock Exchange.

At the present time and for several months to come, obligations of Blair to customers and efforts to make substantial back-office recoveries will necessitate the maintenance of certain operations functions at a substantial rate. Lease commitments for rentals of closed offices, pending assignment or subletting when possible, and other continuing expenses will produce a cash drain. It is hoped that back-office recoveries will more than offset these costs in the long run.

In the meantime, it is the judgment of our Board of Directors that the interests of Blair and its customers, its subordinated creditors and its stockholders will be best served by our retaining control over our own destiny and not surrendering that control to an outside authority.

If you have any questions in regard to the foregoing, please immediately contact Mr. John B. Richardson or Mr. Raymond B. Vreeland at (212) 344-4000.

Very truly yours,

BLAIR & CO., INC.

By [signature]
President

BLAIR & CO., INC.
20 BROAD STREET
NEW YORK, N.Y. 10005

Members
New York Stock Exchange
American Stock Exchange
Midwest Stock Exchange

Cable Address
OCHIALB NEWYORK
Telephone
DI 4-4000

NYSE 41
Deft Ex. 10
Rec'd
Doyle Reporting Inc.
10/24/75

August 5, 1970

Mr. Vernon Stockwell
P. O. Box 1706
Wenatchee, Washington

Dear Mr. Stockwell:

Under the Collateral Agreement between us you have pledged certain securities as collateral for a secured demand note, thus effecting a subordinated loan to Blair for use by it as technical capital for purposes of the capital requirements of the New York Stock Exchange and as working capital, if needed.

It is expected that a working capital deficiency will develop within the next few days, due primarily to the following factors, which are more fully discussed in a later part of this letter: (i) a sharp reduction in the income of the firm without a corresponding decrease in operating expenses, (ii) the expectation that a substantial amount of cash will be required to enable Blair to transfer customer' accounts to other firms, and (iii) other general working capital requirements. With this in view, it has become necessary that we take action to convert the collateral for outstanding secured demand notes into cash. Although securities pledged as such collateral are available for repledging as security for loans obtained by the Corporation from banks or other lenders, normally a maximum of 35% of market value can be borrowed on securities in this category, so that in order to obtain the maximum amount of working capital that can be provided, the securities must be converted into cash. Accordingly, we hereby make demand for payment of your secured note in principal amount equal to the market value of the securities and cash included in the collateral therefor. Presentment of the secured note is being made at our office at 20 Broad Street, New York

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If you have any questions in regard to the foregoing, please immediately contact Mr. John B. Richardson or Mr. Raymond B. Vreeland at (212) 344-4000.

Very truly yours,

BLAIR & CO., INC.

By _____
President

4458
Deft. Exh. For ID 21
~~Plf. Exh. In EV~~
Ruth Cross
Doyle Reporting Inc.
10/29/75

July 23, 1970

Mr. James E. Ramsay, Jr., Pres.
Blair & Company, Inc.
20 Broad Street
New York City, N. Y. 10005

Re: Secured Demand Notes & Stock Purchase - James Arnsel & V. A. Stockwell

Dear Mr. Ramsay:

In March, 1969, we returned to Mr. Hepburn all copies of "Stock Purchase & Secured Note Agreements" signed by us, enclosing therewith checks drawn to Blair & Company in the amount of approximately $15,000 by each of us. In the accompanying cover letter we requested that upon execution of the documents by Blair & Co., Inc., executed copies be returned to each of us, and we have repeated this request on several occasions since that time.

The executed documents have not been returned nor have shares of the common or preferred stock been sent us; however, we each did receive a letter from Mr. Hepburn, dated May 27, 1969, and including what was described as a "final form" to be signed by us in "completion of the secured demand note and stock purchase". These documents were never signed and returned to Blair by us.

The extremely critical nature of Blair's problems were not known by us until this time. Except for the letter to shareholders of March 24, 1970, the only information we have had from Blair & Company, Inc. concerning the affairs of the corporation came from Mr. Thomas McNeil. Mr. McNeil informed us several months ago that the firm was having serious problems as a result of the Schwabacher merger, and the subsequent back office conversion to the Midwest Stock Exchange Clearing Corporation. He referred to spiralling costs and reduced revenue being experienced, but he expressed confidence that Blair would work its way to a satisfactory solution of its problems in due course.

Today Mr. McNeil informed us of a decision by the Board of Directors of Blair to convert some, or all, of the outside Secured Demand Note accounts into cash.

WE DO NOT WANT OUR ACCOUNTS CONVERTED INTO CASH.

Blair & Company, Inc.

We wish to make clear to Blair & Company our position in regard to the Secured Demand Notes and Stock Purchase. We regard this transaction as being an uncompleted transaction and as being invalid.

1. We have not ourselves executed the final documents nor do we intend to do so.

2. No executed documents have been received by us from Blair & Company, Inc.

3. Proper disclosure of impending developments of the affairs of Blair & Company, Inc., having a material bearing on our willingness to participate in a "Secured Demand Notes and Stock Purchase Agreement" has not been made to us by Blair & Company, Inc.

We, therefore, now request that the stocks and or funds currently being held in the Secured Demand Note accounts of each of us be released and returned to us forthwith.

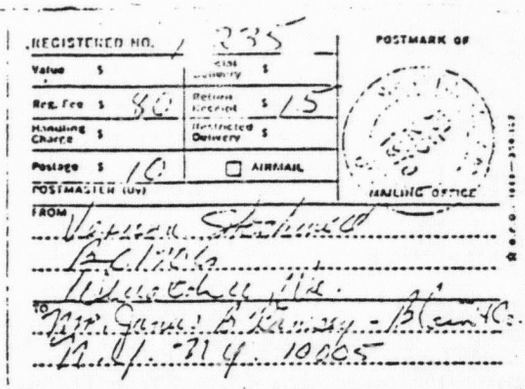
We insist that, under the circumstances which exist in regard to these accounts, that Blair does not have the right, and must not convert to cash the stocks in these accounts or to use any of the stocks or funds for any purpose whatsoever.

Very truly yours,

JAMES ARNELL
VERNON A STOCKWELL

V. A. Stockwell

VASaf
CC: Mr. Benjamin H. Hepburn
Mr. Thomas McNeil



REGISTERED NO. 1235

Value $ | Special Delivery $

Reg. Fee $ 80 | Return Receipt $ 15

Handling Charge $ | Restricted Delivery $

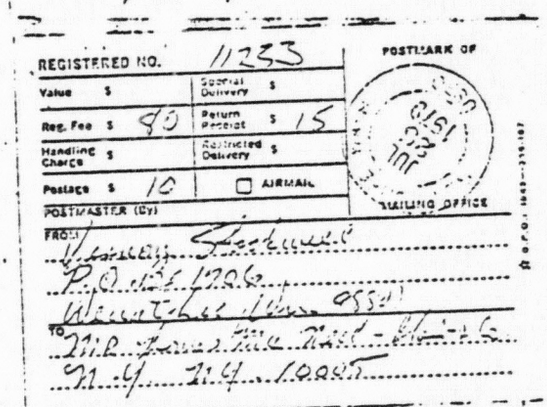
Postage $ 10 | ☐ AIRMAIL

POSTMASTER (by)

POSTMARK OF MAILING OFFICE

FROM Veteran Stationers
P.O. Box 1206
Wenatchee Wash.

TO Mr. James B. Kenny - Blank Co.
N.Y. N.Y. 10005



REGISTERED NO. 11233

Value $ | Special Delivery $

Reg. Fee $ 80 | Return Receipt $ 15

Handling Charge $ | Restricted Delivery $

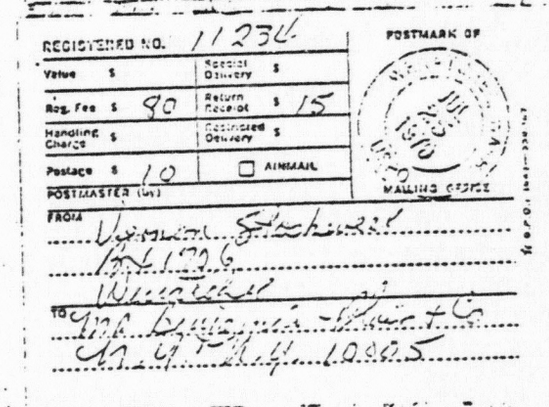
Postage $ 10 | ☐ AIRMAIL

POSTMASTER (by)

POSTMARK OF MAILING OFFICE

FROM Veteran Stationers
P.O. Box 1206
Wenatchee Wash. 98801

TO Mr. James Blank - Blank Co.
N.Y. N.Y. 10005



REGISTERED NO. 11234

Value $ | Special Delivery $

Reg. Fee $ 80 | Return Receipt $ 15

Handling Charge $ | Restricted Delivery $

Postage $ 10 | ☐ AIRMAIL

POSTMASTER (by)

POSTMARK OF MAILING OFFICE

FROM Veteran Stationers
P.O. Box 1206
Wenatchee

TO Mr. James Blank - Blank Co.
N.Y. N.Y. 10005

XYZ
Deft. Exh. For ID 22
~~Plf. Exh. For ID~~
Ruth Goss
Doyle Reporting Inc.
10/29/73

P.O. Box 1706
Wenatchee, Wash. 98801
July 24, 1970

Mr James B. Ramsey, Jr. Pres.
Blair & Co. Inc.
20 Broad St.
New York City, N.Y. 10005

Dear Mr. Ramsey,

Enclosed are copies of letters mailed to you yesterday which I am now sending to you by registered mail return receipt requested in order that I might have a record of them having been delivered to you.

I further want to emphasize that we wish the immediate return of the stock. I further want you to know that we will take immediate action against

Blair & Co. & agent & / individual representing Blair & Co. who dispose of this stock in any way except by returning the stock to us.

We repeat our demand that the stock & or funds held in the S. D. N. accounts be returned to us forthwith.

Very truly yours
James Ansel
Vernon A. Stockwell
by Vernon A Stockwell

C.C. Mr. Benjamin N. Hopkins
Mr. Thomas McNeill

Do you understand the question?

A I understand the question. I believe he had, but I can't now tell you what it was.

Q Can you recall anything else that was said during this conversation in or about the end of July 1970 with Mr. McNell?

A Well, the time frame would be in that whole area but that was the substance of the conversations. We were concerned about the condition of Blair which was news to us and about the fact that our accounts were being sold out and we didn't want them sold out. And also, at about that time, and because of this, we arranged to transfer our accounts out of Blair, that is personal accounts. That took place somewhere around then. That was part of the subject matter of the conversation.

Q Anything else you recall?

A Not at the moment.

Q When next did you have any communication with anyone at Blair other than statements of your account?

A Well, it was in this period of time we got -- I got the telegram and the letter.

MR. REILLY: Will you mark this Exchange Exhibit next in number.

(Letter dated August 5, 1970, on the letterhead of Blair, to Mr. Arneil, consisting of three pages, was marked NYSE Exhibit No. 24 for identification, as of this date.)

(Copy of telegram dated August 7, 1970 from Blair & Company was marked NYSE Exhibit No. 25 for identification, as of this date.)

BY MR. REILLY:

Q I show you Exhibit 24 for identification which is a three-page letter on Blair letterhead dated August 5, 1970 and ask if that is the letter to which you had just referred in your answer.

A That's correct.

Q I show you an August 7, 1970 telegram marked Exchange Exhibit 25 for identification and ask if that is the telegram to which you had just referred in your last answer?

A That's correct.

Q Did you respond to Exhibits 24 or 25?

A Well, we discussed it, certainly, with Mr. McNell.

Q Did you respond in writing or by telegram?

A I don't believe so.

Q Did you call up Mr. McNell after receipt of either of these?

telegram

PRB004 SYA355
PR K SE 115 LDX0254 LLZ10 LLZ10 BJ NL PDB=
=SLDX NEW YORK NY AUG 5=
JAMES ARNEIL= 1970 AUG 7 AM 7 55
921 BRYAN ST WENATCHEE WASH

DEMAND IS HEREBY MADE FOR PAYMENT OF THE SECURED NOTE OUTSTAND UNDER COLLATERAL AGREEMENT BETWEEN US. PRESENTMENT OF THE SECURED NOTE IS BEING MADE A OUR PRINCIPAL OFFICE, 20 BROAD STREET, NEW YORK, NEW YORK. IF BY 9:30 A.M., EASTERN DAYLIGHT TIME, FRIDAY, AUGUST 7, 1970 YOU HAVE NOT PAID THE SECURED NOTE IN FULL OR MADE ARRANGEMENTS SATISFACTORY TO US FOR SUCH PAYMENT, THE SECURITIES COLLATERAL WILL BE SOLD AND

WU 1201 (R 5-69)

Defr. Exh. For ID .....
Rec'd .....
Ruth Gross 10/29/71
Doris Reporting Inc.

telegram

PROCEEDS PLUS OTHER CASH, IF ANY, IN THE ACCOUNT WILL BE APPLIED TO PAYMENT OF THE SECURED NOTE. PLEASE ADVISE RAYMOND B. VREELAND AT 20 BROAD STREET, NEW YORK, NEW YORK IMMEDIATELY BY WIRE OR TELEPHONE (212-344-4000) IF YOU PROPOSE TO PAY THE SECURED NOTE OR ANY PORTION THEREOF IN CASH AND WITHDRAW SECURITIES HAVING A MARKET VALUE EQUAL TO SUCH CASH. A LETTER CONFIRMING AND EXPLAINING REASONS FOR THIS DEMAND IS BEING MAILED OR DELIVERED TO YOU=
BLAIR & CO INC BY: JAMES B RAMSEY JR PRESIDENT.==

:20 2:50 AM 7 1970 20 (212-344-4000).

Western Union Telegram

PRB006 SYA360

PR K SE 139 LDX0267 LLZ10 LLZ10 BJ NL PDB=

SLDX NEW YORK NY AUG 5=

VERHON STOCKWELL=

PO BOX 1706 WANEATCHEE WASH

1970 AUG 7 AM 7 59

DEMAND IS HEREBY MADE FOR PAYMENT OF THE SECURED NOTE OUTSTAND UNDER COLLATERAL AGREEMENT BETWEEN US. PRESENTMENT OF THE SECURED NOTE IS BEING MADE AT OUR PRINCIPAL OFFICE, 20 BROAD STREET, NEW YORK, NEW YORK. IF BY 9:30 A.M., EASTERN DAYLIGHT TIME, FRIDAY, AUGUST 7, 1970 YOU HAVE NOT PAID THE SECURED NOTE IN FULL OR MADE ARRANGEMENTS SATISFACTORY TO US FOR SUCH PAYMENT, THE SECURITIES COLLATERAL WILL BE

WU 1201 (R 5-63)

Western Union Telegram

SOLD AND PROCEEDS PLUS OTHER CASH, IF ANY, IN THE ACCOUNT WILL BE APPLIED TO PAYMENT OF THE SECURED NOTE. PLEASE ADVISE RAYMOND B. VREELAND AT 20 BROAD STREET, NEW YORK, NEW YORK IMMEDIATELY BY WIRE OR TELEPHONE (212-344-4000) IF YOU PROPOSE TO PAY THE SECURED NOTE OR ANY PORTION THEREOF IN CASH AND WITHDRAW SECURITIES HAVING A MARKET VALUE EQUAL TO SUCH CASH. A LETTER CONFIRMING AND EXPLAINING REASONS FOR THIS DEMAND IS BEING MAILED OR DELIVERED TO YOU=

BLAIR & CO INC BY: JAMES B RAMSEY JR PRESIDENT.==

PJK

25321/2 5s42 3/8 28 1/8 4s20 28 1000s 14 5

NEW YORK STOCK EXCHANGE
NEWS BUREAU

11 WALL STREET, NEW YORK, N.Y. 10005 · Code 212 623-2065 TWX No. 710-581-5464
For further information contact JAMES F. HILL Manager NEWS BUREAU Home Phone (West Windsor, N. J.) 609-799-0344

FOR RELEASE: THURSDAY, AUGUST 13, 1970

The New York Stock Exchange today disclosed names of five member firms which have terminated their public business in the last several months because of capital problems and which may require Exchange financial assistance.

Five other firms in formal liquidation already have been announced. The Exchange until now had not publicly announced the others, pending an orderly transfer of customer accounts out of the firms. This process, said the Exchange, almost is completed.

In a letter today from Exchange President Robert W. Haack informin the NYSE membership on the Exchange's Special Trust Fund and member firm liquidations, Mr. Haack said:

"The Exchange has told both the Securities and Exchange Commission and the Congressional committees involved in pending customer protection legislation that it is committed to protecting the customers of these ten firms through its Special Trust Fund. We have stated that we believe the money available to the Trust Fund is sufficient to complete the delivery o public customer accounts from these ten firms."

The five firms already in formal liquidation are McDonnell & Co., Inc.; Amott, Baker & Co., Inc.; Gregory & Sons; Baerwald & DeBoer; a Demosey-Tegeler & Co., Inc. of St. Louis. The other five firms named tod but not in formal liquidation are Meyerson & Co., Inc. of San Francisco; Fusz-Schmelzle & Co., Inc. of St. Louis; Blair & Co., Inc. and Orvis Brothers & Co. both of New York; and Kleiner, Bell & Co., Inc. of Beverl Hills.

Mr. Haack said that as of July 31, the Trust Fund had expended or advanced some $19.5 million and provided guarantees in member firm accounts totaling $11.2 million. He said this leaves the Fund with some $24 million for use to assist public customers of the 10 member firms in liquidation.

Additional funds if needed to protect customers of firms that are also members of the American Stock Exchange could be made available from the American Stock Exchange's Trust Fund. This Fund currently totals $2.6 million and could be increased through borrowing and assessments or a combination of both to a total of $10 million. Thus, between the New York and American Exchanges approximately $34 million, before any recoveries, is available to assist customers.

The Special Trust Fund was set up in 1964. It is not a guaranty Fund but is used, at the discretion of the Fund's trustees, to assist customers of member firms in financial difficulties.

Mr. Haack's letter said over 90 per cent of the potential costs of liquidating the firms named "is directly related to the paperwork and record-keeping problems which developed in five of these firms in 1968."

"To our knowledge," he added, "there are no NYSE member firms in business with major current paperwork problems. This is significant because experience indicates that firms in financial difficulty, but with current and correct records, can transfer customer accounts if necessary either at no cost or very little cost to the Special Trust Fund."

The Exchange President said regulatory efforts now focus on an "early warning" system designed to spot potential capital and operational problems in firms.

While the Exchange's net capital rules require that firms stay

within a debt-to-net asset ratio of 20-1, the "early warning" system provides that firms with capital ratios over 12-1, or with a monthly loss over 15 per cent of excess net capital furnish the Exchange with a detailed plan to bring expenses in line with revenues. A five-member committee of the Board of Governors reviews the status of these firms weekly.

The system, which seeks to start in ample time corrective steps such as capital raising, cost-cutting or sale or merger, has been successfully applied to a number of firms caught in the current decline in market volume and securities prices. "This self-regulatory emphasis on planning and prevention has been growing rapidly since our experience with the paperwork problems of 1968 and represents an important extension of Exchange self-regulation," said Mr. Haack.

At the end of June, said the letter, more than 87 per cent of the NYSE firms required to meet capital rules had capital ratios of 10-1 or less. Some 63 per cent had ratios of 5-1 or less.

Mr. Haack said regulation of member organizations of the Exchange is handled under a coordinator system at the Exchange's Member Firms Department in which all pertinent data on firms is funneled to six coordinators who are assigned financial examiners and operational experts for analysis and interpretation of firm reports for possible problems.

The letter also cited legislation now in the Congress to create a Securities Investor Protection Corporation, of which all broker/dealers registered under the 1934 Securities Act would be members unless exempted by the SEC. The corporation would be funded by the securities industry and backed by standby credit from the U.S. Treasury. It would cover claims of members' customers on the liquidation of a broker/dealer for fully-paid-for securities which are specifically identifiable and payment of customers' free credit and net equity balances up to $50,000 per customer.

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Deft. Exh. For ID 26
Reporting Inc.
10/24/73

Telegram

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JAMES ARNEIL= 605 DONEEN BLDG WENATCHEE WASH 98801=

"AN EMERGENCY MEETING OF SUBORDINATED SECURITY HOLDERS OF BLAIR & CO. WILL BE HELD AT THE HOTEL COMMODORE, GRAND CENTRAL, NEW YORK CITY, STUDIO 104, ON FRIDAY, AUGUST 21, 1970 AT 3 P.M. MEETING IS BEING CALLED INDEPENDENT OF BLAIR MANAGEMENT, TO COMPARE NOTES AND EXAMINE OUR MUTUAL INTERESTS IN THE LIGHT OF BLAIRTS CONDITION AND CONDUCT=
JOHN P. FOLEY, JR. 50 EAST 42ND STREET NEW YORK N. 10017 (212) 697-9657"=

Q You had it at some time and I am asking if, after you got that information, did you discuss bringing such suit.

A Well, for instance, Mr. Reilly, this is why I am unable to answer your question. You are saying money withdrawn when it should not have been. Whether it should have been or should not have been, I don't know.

Q I am not saying it. That is what you had said.

A But that is what is in your question.

Q Yes.

A I don't have that information. Whether it was wrongful or not wrongful, I don't know that. I have been told that money was taken out, however.

Q Did you make any effort to ascertain how much had been taken out by such insiders?

MR. HANNAN: Apart from any efforts made on your behalf or through or with your counsel.

Q Any efforts you made is my question.

A Well, I don't believe any except in connection -- except through attorneys.

Q Did you attend the meeting at the Commodore on August 21st referred to in Exhibit 26?

A Not in person.

Q Did anyone attend on your behalf?

A Yes.

Q Who?

A Attorneys.

Q Could you identify them by name?

A Webster,Sheffield attended.

Q Who in their firm attended in your behalf?

A I don't know, either Mr. Cortese or possibly a Mr. Cooke, if that latter name is correct.

Q Did they also attend on behalf of Mr. Stockwell?

A Yes.

Q Did you retain that firm together to represent your interests at that time with respect to this investment?

A I don't know just when they were contacted but they attended on behalf of both of us at that meeting.

Q For how long thereafter did Webster, Sheffield represent you in connection with this investment in Blair?

A I don't know the date of the last correspondence with them but it continued for at least several months.

Q Do you recall when they were first retained by you and Mr. Stockwell?

First of all, is that correct, they were

A I am sure that I did. I have seen it.

Q Do you recall whether you received it in May or perhaps June of 1971?

A I would find it hard to place the time. I don't know without --

Q That's all right.

A I did receive this. It is dated May 25, so it likely was in that time period.

Q Did you file any creditor claim in that proceeding?

A I think I had a minor creditor claim in regard to one of my other accounts which I did file and which actually I was able to get some payment for.

Q What was the amount of your claim as a creditor?

A I don't recall. It was a minor amount.

Q $100 or more?

A No, I would say in the area of $100, 150, I don't recall, but it was a relatively small amount.

Q Was your creditor claim paid in whole or in part?

A I think it was paid fully.

Q Did you file any claim in that proceeding other than with respect to that relatively small amount?

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES ARNEIL and VERNON A. STOCKWELL, Plaintiffs,	:	75 Civ. 1766 CLB
-against-	:	STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE
JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE, Defendants.	:	

Pursuant to Rule 9g of the General Rules of the United States District Court for the Southern District of New York, defendant New York Stock Exchange, Inc. (the "Exchange") sets forth its statement of the material facts as to which the Exchange contends there is no genuine issue to be tried:

1. Plaintiffs have been residents of the State of Washington and have conducted their business in Washington at all times relevant to this action (Plaintiffs' Depositions, Exs. 1, 31).

2. The Exchange is a national securities exchange registered pursuant to Section 6 of the Securities Exchange Act of 1934 and regulated by the Securities and Exchange Commission under Section 19 of the Exchange Act (Bishop Aff., ¶ 3).

3. Plaintiffs became capital contributors to Blair & Co., Inc. ("Blair") by purchasing common and preferred stock of Blair and by making subordinated loans to Blair in 1969 (Plaintiffs' Depositions, Exs. 1, 31).

4. The Exchange made no representations to plaintiffs in connection with the purchases of Blair stock or the subordinated loans and did not approve any statements made to plaintiffs by representatives of Blair (Plaintiffs' Depositions; Bishop Aff., ¶ 4).

5. Any representations made to plaintiffs in connection with the purchases of Blair stock or the subordinated loans to Blair were made to plaintiffs in the State of Washington (Plaintiffs' Depositions).

6. Plaintiffs sent securities from Washington to Blair as collateral security for the subordinated loans and sent their checks from Washington to Blair in payment for the purchases of Blair stock. Any loss suffered by plaintiffs as a result of this transaction was suffered in Washington (Plaintiffs' Depositions, Exs. 8, 9, 10).

7. Plaintiffs' applications for approval as non-voting shareholders of, and subordinated lenders to, a member corporation were submitted to the Exchange as required by Exchange Rules 311 and 312 after plaintiffs decided to purchase stock of, and make subordinated loans to, Blair and were reviewed by the Exchange to obtain assurance that plaintiffs' integrity and related qualifications would not hinder the Exchange in performing its duties to insure fair dealing and to protect investors (Bishop Aff., ¶ 4).

8. The Exchange had no knowledge or means to obtain knowledge of any conspiracy to defraud plaintiffs or of any fraudulent statements made to plaintiffs. The Exchange did not approve and was not aware of any fraudulent plan to raise capital for Blair (Bishop Aff., ¶¶ 4-5, 29).

9. The Exchange amended its Rule 313 in 1971 in order to require member organizations to submit opinions of counsel as to the necessity of registration under and compliance with the Securities Act of 1933 after member corporations were permitted to issue certain freely transferable securities. This requirement was imposed to aid the effectiveness of the Exchange's Rule 325 -- its net capital rule (Bishop Aff., ¶ 5).

10. Schwabacher & Co., as a result of its inability to handle its business on an operationally sound basis, was first placed on restriction by the Exchange in February 1968. The firm was restricted from, among other things, increasing its registered representatives and offices and asked to reduce its volume, freeze the opening of new accounts and reduce underwritings and advertising. Thereafter, a restriction was placed on the number of trades the firm could handle on a daily basis. In late October 1968, the Exchange determined that the business of Schwabacher & Co. must be further reduced, and in early December placed a December 15 deadline for the firm's decision either to merge with another firm or sell a number of branch offices (Bishop Aff., ¶¶ 6, 8, 10 and Exhibits; Exhibit R at 5).

11. Knowledgeability letters were used in connection with capital contributions to Schwabacher during 1968 and, although one was considered when Blair proposed to make a capital loan to Schwabacher in November 1968, none was received with respect to Blair during 1968 or 1969. The decision to request such letters was an ad hoc decision that was made by a person on the Exchange staff concerned with the oversight of the particular firm. These ad hoc decisions were under informal standards which

developed as time went along and were not made pursuant to any rule of the Exchange (Bishop Aff., ¶¶ 22-25).

12. The Exchange, by imposing censures and fines in April 1969, disciplined Schwabacher & Co. and Albert E. Schwabacher, Jr. for violations of applicable Exchange rules and SEC rules arising from the inadequacies and inaccurate condition of Schwabacher & Co.'s records. The Commission, having instituted a private proceeding in July 1968, also disciplined Schwabacher & Co. and Albert E. Schwabacher, Jr., and publicly announced its findings and penalties in a release issued in August 1969 which described the disciplinary action already taken by the Exchange and the circumstances of Schwabacher & Co.'s violations of applicable regulations. Representatives of the Exchange and of the Commission discussed Schwabacher's offer of settlement of the Commission's private proceeding and the discipline which would be imposed by the Exchange (Bishop Aff., ¶¶ 7, 9, 10, 17-21 and Exhibits annexed).

13. The Exchange's regulatory action with respect to Schwabacher was a proper exercise of its duties to regulate Schwabacher and to aid it in gaining control of its operations in order to protect the accounts of public customers (Bishop Aff., ¶¶ 6-10, 17-21).

14. A public announcement of the Commission's disciplinary action against Schwabacher was made on August 28, 1969, a date more than three years before the commencement of this action, and fully described the facts upon which plaintiffs base their Rule 10b-5 claims and circumstances sufficient to give them notice of those facts (Bishop Aff., Exhibit S).

15. The Exchange did not object to the acquisition of Schwabacher by Blair and had no basis to support any objections. In late 1968 and early 1969 Blair was considered to be a well-managed, growing and financially sound securities firm and its president had an excellent reputation as a very able, knowledgeable and efficient administrator (Bishop Aff., ¶¶ 11-16).

16. After the acquisition of Schwabacher by Blair on March 1, 1969, the back office of the Schwabacher Division of Blair was kept separate from the rest of Blair's back office and Schwabacher's operating difficulties improved so that in September 1969 many of the previously proposed restrictions were removed or modified (Bishop Aff., ¶¶ 11, 26).

17. The annual audit of Blair in 1969 was conducted by means of an audit of the books and records of Schwabacher Division of Blair in June 1969 and an audit of the books and records of Blair Division in September 1969. This procedure was requested by Blair's auditors and approved by the Securities and Exchange Commission after consultation with Mr. Andrew Barr, chief accountant of the Commission (Bishop Aff., ¶ 28).

18. The difficulties encountered by Blair and the eventual liquidation of Blair in 1970 were caused by its conversion of its back office to the recordkeeping system of the Midwest Stock Exchange Service Bureau and by large operating losses in the latter part of 1969 and in 1970 (Bishop Aff., ¶¶ 30-31).

19. The Exchange's regulatory action with respect to Blair was a proper exercise of its duties to regulate Blair and to aid Blair in taking steps to meet the Exchange's capital

requirements and protect the accounts of public customers (Bishop Aff., ¶¶ 11-16, 28-31).

Dated: New York, N.Y.
December 16, 1975

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY

By _____
(A Member of the Firm)
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant
New York Stock Exchange, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES ARNEIL and VERNON A. STOCKWELL,

Plaintiffs,

-against-

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE,

Defendants.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

MILBANK, TWEED, HADLEY & McCLOY
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Attorneys for Defendant
New York Stock Exchange, Inc.

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DEC 18 1975
MILBANK TWEED HADLEY & McCLOY

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Spencer Carlson
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMES ARNEIL and VERNON A. STOCKWELL, Plaintiffs,	75 Civ. 1766 CLB
-against-	NOTICE OF MOTION
JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE, Defendants.	

PLEASE TAKE NOTICE that upon the annexed affidavit of Robert M. Bishop, sworn to on December 15, 1975 and the exhibits annexed thereto, the depositions conducted in this action, and the pleadings and all prior proceedings, the undersigned will move this Court at Room 2704 of the United States Courthouse, Foley Square, New York, N.Y., on January 12, 1976, at 9:30 A.M. or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, granting summary judgment dismissing the action with prejudice upon the ground that there is no genuine issue as to any material fact and that defendant New York Stock Exchange, Inc. is entitled to judgment as a matter of law, with costs and disbursements.

Dated: New York, N.Y.
December 16, 1975

MILBANK, TWEED, HADLEY & McCLOY

By _____
(A Member of the Firm)
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant
New York Stock Exchange, Inc.

194

TO: SPENGLER CARLSON GUBAR & CHURCHILL
280 Park Avenue
New York, N.Y. 10017
Attorneys for Plaintiffs

MILGRIM, THOMAJAN & JACOBS, P.C.
25 Broadway
New York, N.Y. 10004
Attorneys for Defendants
Ramsey, Vanderbilt and Lendman

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

JAMES ARNEIL and VERNON A. STOCKWELL,:

Plaintiffs, : 75 Civ. 1766 CLB

v. : AFFIDAVIT IN SUPPORT OF MOTION OF DEFENDANT NEW YORK STOCK EXCHANGE, INC.

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE, :

Defendants. :

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT M. BISHOP, being duly sworn, says:

1. I am a Senior Vice President of New York Stock Exchange, Inc. (the "Exchange") in charge of regulation and surveillance of member organizations. The facts hereinafter stated are either known to me or derived from the records of the Exchange maintained under my custody, possession and control. I make this affidavit in support of the motion by the Exchange for summary judgment dismissing each of the claims in the complaint.

2. The Exchange is a not-for-profit corporation incorporated under the laws of the State of New York and composed of individual members engaged in the business of broker-dealers. The majority of Exchange members are associated with organizations (either partnerships or corporations) engaged in the securities business. Prior to 1953, members of the Exchange conducted their business operations either as a sole proprietorship or, more commonly, as a partnership. At that time the Exchange permitted member firms to incorporate and, in 1970,

member corporations were allowed to issue certain securities which would be freely transferable.

3. The Exchange is registered as a national securities exchange with the Securities and Exchange Commission pursuant to Section 6 of the Securities Exchange Act of 1934. Upon applying for such registration in September 1934, the Exchange was required to submit its constitution and rules to the Commission. By order of September 28, 1934, the Commission determined that the Exchange was so organized as to be able to comply with the provisions of the Exchange Act and the rules and regulations thereunder, and that the rules of the Exchange were just and adequate to insure fair dealing and to protect investors. The registration of the Exchange became effective as of October 1, 1934, and the Exchange has continued to be registered as a national securities exchange.

Exchange Requirements Relating to Sale of Stock in Member Corporations

4. In order to become a stockholder of a member corporation of the Exchange, a person is and has been required, pursuant to Rules 311 and 312, to execute an application for approval by the Board of Directors (formerly known as the Board of Governors) of the Exchange. Each of the plaintiffs executed such an application and submitted it to the Exchange after agreeing to become a stockholder of Blair & Co., Inc., a member corporation of the Exchange. Copies of these applications are annexed hereto as Exhibit A. The application emphasizes in its opening paragraphs that the failure to disclose the facts and circumstances of any prior fraudulent or dishonest act by the applicant, and the making of any material misstatements on the application, may result in suspension or expulsion of the

applicant. Immediately above the applicant's signature is a pledge in which the applicant agrees:

> "to abide by the Constitution and Rules of the Board of Governors of the New York Stock Exchange as the same have been or shall be from time to time amended, and by all rules and regulations adopted pursuant to the Constitution, this pledge to become effective in the event of, and forthwith upon, the approval of this application."

These applications were reviewed in accordance with the usual procedures of the Exchange. The purpose of this review is to approve the person applying as one who has requisite integrity and related qualifications to acquire an ownership interest in a member organization. The character and reputation of the individual must not be such that it would hinder the Exchange in performing its regulatory duty "to insure fair dealing and to protect investors." The review is not intended to discover the course of dealings between the applicant and the member organization or the content of any representations made during that negotiation. Instead, the review is to insure that the applicant is an appropriate person to become part of a self-regulatory entity and that the arrangements made by the applicant do not violate any Exchange rules such as those governing fixed interests in the business of a member organization, encumbrances or pledges of the stock, outside business connections, etc. See, e.g., NYSE Rules 311-318, 420, 2 CCH N.Y.S.E. Guide ¶ 2311-18, 2420 (1969).

5. The Exchange requires member organizations to disclose information concerning their establishment and organization in order to be assured that contributions to the capital of member organizations, which were to be used by that member organization as "net capital" in the computation required by Rule 325, 2 CCH N.Y.S.E. Guide ¶ 2325 (1969), would not be withdrawn in a manner which would jeopardize the financial responsibility of such

member organizations. For example, Rule 313 requires a member corporation to submit corporate documents, including its certificate of incorporation, by-laws, forms of stock certificates and agreements between the member corporation and any of its stockholders. These documents are examined by the Exchange to insure that provisions required by its rules concerning the disposition of stock and the restrictions on transfer or payment of dividends have been included. (A copy of NYSE Rule 313 and Supplementary Material, 2 CCH N.Y.S.E. Guide ¶ 2313 (1969), is annexed hereto as Exhibit B.) In 1970, the rules of the Exchange were revised to permit member corporations to issue certain freely transferable securities. Several instances involving purchasers of stock issued by member corporations who asserted a right of rescission against those corporations for violations of applicable registration requirements of state blue sky laws came to the attention of the Exchange. Thereafter the Exchange's Department of Member Firms prepared a memorandum dated November 9, 1971 (Exhibit C hereto) concerning the effect such a rescission might have on the net capital position of member organizations. The memorandum states that:

> "the possibility that 'net capital' obtained through issuance of securities in violation of an applicable federal or state securities law may, in fact, be recoverable by investors who exercise their right of rescission [under state 'blue sky' laws or under the Securities Act of 1933]. Obviously, the proceeds of sale of securities which are subject to recovery by the purchasers of the securities should not be deemed to be good net capital under Rule 325." (Exhibit C, Nov. 9, 1971 memo at 2)

In order to assure the permanence of the "net capital" of member organizations, the Department of Member Firms recommended that a requirement be imposed on

> "each member organization to furnish to the Exchange an opinion of counsel as to whether any offer to sell securities for the purpose of raising capital under Rule 325 needs to be registered under the 1933 Act [or] any 'Blue Sky' laws of any state." (Exhibit C, Nov. 9, 1971 memo at 2)

On November 18, 1971 the Board of Governors of the Exchange considered and approved in principle an amendment to Rule 313 to require member organizations to furnish an opinion of counsel in connection with any security offering made by a member organization for the purpose of raising capital to be used under Rule 325. (See Exhibit C hereto.) After the proposed rule change was submitted to the Commission, it was given final approval by the Exchange's Board of Governors on December 16, 1971. By adopting this amendment, the Exchange did not assume responsibility for enforcing the Securities Act of 1933 or for enforcing the "blue sky" laws of 50 separate jurisdictions. Instead, it imposed the requirement upon member organizations to aid the effectiveness of its net capital rule.

Schwabacher's Operations

6. In 1968 Schwabacher & Co., a large West Coast regional firm and Exchange member firm, was experiencing operational difficulties arising from the increased volume of transactions in securities markets as a whole and on the floor of the Exchange and from the conversion of its bookkeeping to the Midwest Stock Exchange Service Bureau. During the period between February and August 1968, the Exchange imposed certain restrictions on Schwabacher in order to restrain its business until its operational difficulties could be sufficiently reduced. In a letter dated February 27, 1968, Schwabacher was informed that the Exchange would not approve any new registered representatives for the firm and that the firm was restricted from making any new commitments for underwritings or expansions of its business. After meeting with Schwabacher, the Exchange in a letter dated March 11, 1968 recorded Schwabacher's agreement to limit its business to a level of less than 1500-1700 transactions per day until (a) the firm was

able to maintain its records in a current and accurate manner and (b) the firm resolved most of the errors and differences in its records of past business. The Exchange also requested a written description of the steps which Schwabacher had taken and would take to improve its operations. On June 27, 1968 I again wrote to Schwabacher enclosing a memorandum of steps taken by other member organizations to restrain business until their operational difficulties were eliminated or greatly reduced, stated that unless Schwabacher's volume was restrained to 1700 trades per day, it would be necessary to prohibit the firm from any underwriting or trading for its own account or as principal and suggested that advertising which used the firm's name should be discontinued. On July 23, 1968, I informed Schwabacher by letter that it should not accept sell orders for over-the-counter securities unless it had the ability to deliver the securities before the sale was made. Copies of these letters are annexed as Exhibit D.

7. On July 11, 1968 the Securities and Exchange Commission issued an order commencing a private proceeding against Schwabacher & Co. and Albert E. Schwabacher, Jr. A copy of that order is annexed hereto as Exhibit E. The private proceeding was instituted to determine whether Schwabacher had violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 and Section 8(c) of the Exchange Act and Rule 8c-1(a)(2). In July 1968 the Exchange received a letter from Schwabacher to the Commission's Regional Office in San Francisco confirming restrictions on advertising, underwritings, market-making, accepting new accounts and other activities of Schwabacher which had been agreed upon with the Commission. A copy of that letter is annexed as Exhibit F.

8. On October 24, 1968 I wrote a letter to Schwabacher which referred to the fact that its auditors had reported the

continuation of material inadequacies in Schwabacher's accounting system and control. Schwabacher was instructed to reduce its volume by 10% during the next month and by an additional 10% during the subsequent month. Schwabacher was asked to determine for itself how these reductions would be accomplished, i.e., by sale of offices, release of registered representatives or introduction of accounts to other member organizations on a disclosed basis. On November 7, 1968 representatives of Schwabacher met with representatives of the Exchange to discuss such restrictions. Schwabacher informed the Exchange at this meeting that the firm's current business was under control so that security differences were not increasing. After the meeting I wrote to Schwabacher to confirm the Exchange's decision to defer the restriction calling for a 10% reduction in Schwabacher's business at least until December 15, 1968. (See Exhibit G hereto: letter dated October 24, 1968; memorandum dated November 7, 1968; letter dated November 7, 1968.)

9. On November 20, 1968 the Exchange received the auditor's report on the answers to the financial questionnaire of Schwabacher as of August 30, 1968 which stated that the answers "did not present fairly the overall financial position of Schwabacher & Co. at August 30, 1968" (Exhibit H). On November 26, 1968 I had discussions concerning the disciplinary action that would be taken against Schwabacher with Stanley Sporkin, the Associate Director of the SEC's Division of Trading and Markets and with Albert E. Schwabacher, Jr. My memorandum of those conversations is annexed as Exhibit I. Schwabacher & Co. was willing to make an offer of settlement to the Commission which would accept a censure referring to sanctions imposed by the Exchange and waiving the $10,000 limitations under the Exchange's

Constitution so that fines of up to $50,000 could be imposed. I made it clear that the Exchange would retain its power to censure, suspend or expel as well as to fine for Schwabacher's violations of applicable regulations. The Exchange's disciplinary action was to be announced in the Commission's announcement of its own penalty. On the afternoon of that same day I met with William M. Lendman, president of Blair, concerning details of the merger discussions he had been conducting with Schwabacher. Mr. Lendman said that Blair planned to add $6,000,000 to its own capital and then loan $6,000,000 to Schwabacher for six months and that he planned to spend the major part of his time at Schwabacher for the next six months along with two of his top executives. (See Exhibit J.)

10. On December 2, 1968 I attended an all-day meeting with the Commission staff concerning Schwabacher. My memorandum of that meeting is annexed as Exhibit K. At the meeting we discussed the Commission's private administrative proceeding against Schwabacher. The Commission had refused to accept an offer of settlement from Schwabacher limiting penalties against individuals in the firm to censures, and Blair & Co. was not interested in a merger if the Commission's penalties went beyond censure. Blair reported that it had decided not to pursue the merger but then decided to loan money to Schwabacher for longer than six months and requested 11 days to have its auditors determine Schwabacher's audit possibilities more precisely. I insisted that $3,000,000 be placed in Schwabacher and that the Exchange would wait for 11 days for the other $3,000,000 that Blair was to lend to Schwabacher. After Blair accepted this condition and dropped its demand that the Commission agree not to impose sanctions on individuals, the Commission staff took Schwabacher's

offer of settlement to the Commission. While the staff was meeting with the Commission, Schwabacher & Co. decided to complete arrangements for a $3,000,000 loan from the Union Bank in California rather than accepting the loan from Blair. The final arrangement with Schwabacher from the December 2 meeting was that it agreed to inform the Exchange by December 15 as to whether it planned to merge with another firm or sell a number of branch offices and after the meeting I wrote a letter dated December 3, 1968 to Schwabacher confirming this (Exhibit L). Schwabacher responded in a letter dated December 12, 1968 (Exhibit M) stating that it had agreed in principle to merge with Blair. Schwabacher's counsel sent the Exchange a copy of the revised offer of settlement sent to Mr. Sporkin of the Commission's staff on December 14, 1968. This offer of settlement (Exhibit N hereto) provided that Schwabacher would consent to a censure from the Commission referring to and taking into account sanctions imposed or to be imposed by the Exchange and the Commission's acceptance of the settlement could be withdrawn if the acquisition of Schwabacher by Blair was not accomplished on or before March 31, 1969. The assets of Schwabacher were acquired by Blair pursuant to a purchase and escrow agreement to become effective on February 28, 1969.

Approval of the Acquisition was Proper

11. Plaintiffs assert that the Exchange should not have permitted the acquisition of Schwabacher by Blair. There is nothing to support such a view and both the Exchange and the Securities and Exchange Commission anticipated that the acquisition was in the best interest of public investors. The Exchange did not object to the acquisition of Schwabacher by Blair and had no basis to support any objections. In late 1968, Blair was considered to be a well-managed, growing securities firm. William M.

Lendman, Blair's president, had an excellent reputation as a very able, knowledgeable, and efficient administrator, having guided Blair through a period of expansion and growth. In September 1968 the Exchange stated in an internal memorandum following a "cost consultation" with Blair that Blair had "experienced record growth in almost every area of income and expect[s] this growth to continue" (Exhibit O). The discussions leading to eventual merger of the two member organizations had not been initiated by the Exchange but by the parties themselves. Blair's capital position and its management were strong, while Schwabacher's problems existed in the operations of its back office. The combination of the two firms, with separate back offices to prevent the operational problems of Schwabacher from affecting Blair's back office, seemed very likely to succeed.

12. Searching for reasons to support their view that the acquisition of Schwabacher by Blair in February 1969 was improper and should not have been approved by the Exchange, the plaintiffs assert that the "cost consultation" with Blair in September 1968 revealed that Blair ranked last in its group of firms in gross income per employee (complaint, ¶ 11), that an Exchange employee had considered the acquisition by Blair in August 1968 of the domestic branch offices of A. L. Stamm & Co. to be inadvisable (complaint, ¶ 13) and that Blair was "under investigation" for a net capital violation at the time of the acquisition (complaint, ¶ 33). The facts underlying these circumstances provide no support for the view that the Exchange should have disapproved the acquisition.

13. The memorandum reporting on the "cost consultation" with Blair in September (Exhibit O) explains that the low income per employee was caused by the low production of the firm's

registered representatives who had been employed only recently and that their production was expected to increase. The memorandum states: "Although the firm's gross income per employee was low they b[illegible]erienced record growth in almost every area of income and [illegible] this growth to continue." The low income produced by new registered representatives is not unusual since they generally are expected to require about two years to develop their potential sales volume.

14. The proposed acquisition of offices from A. L. Stamm & Co. was considered by the Exchange in a memorandum dated August 1, 1968. The memorandum concludes that "if Blair & Co., Inc. were able to retain the operations employees of A. L. Stamm & Co. it would appear that it could handle this acquisition." This conclusion was questioned by W. E. Jones, another employee of the Department of Member Firms, and ultimately Blair acquired only two branch offices from Stamm. (See Exhibit P hereto: memorandum dated August 1, 1968; memorandum dated August 8, 1968; letter dated October 2, 1968.)

15. The reference in the complaint to the pending investigation of a possible capital violation by Blair at the time of the acquisition is a red herring. The possible violation had occurred 11 months earlier on March 31, 1968 and had been reported to the Exchange by Blair and promptly corrected by Blair. The violation had not continued beyond that date and was the result of a misunderstanding by Blair and its auditors of capital charge for noncurrent dividends receivable. At the time Blair agreed in principle to acquire Schwabacher, its financial position, as reported to the Exchange, was strong. In its answers to a special operations questionnaire it reported to the Exchange a capital ratio of 1388%, well below the limit of 2000% imposed by Rule 325,

and a net worth of $15,123,877 as of February 28, 1969. Although the investigation as to whether a violation had occurred continued until July 1969, the Exchange determined that any violation did not merit the bringing of formal charges and notified Blair in July 1969 that it would not pursue the matter further. (See Exhibit Q: special operations quesionnaire as of March 28, 1969; staff memorandum dated April 16, 1969; Blair's letter dated March 19, 1969; letter to Blair dated July 3, 1969.) The possible violation presented absolutely no reason to question Blair's financial responsibility in February 1969.

16. Plaintiffs have also included in their complaint an advertisement of Blair referring to the acquisition of Schwabacher. I have requested that a search of the Exchange files be made for that advertisement which plaintiff alleged was subject to Exchange rules concerning standards and approvals of advertising (complaint, ¶ 34). This search has not uncovered any evidence that the Exchange approved any advertisements for Blair during 1969. If the advertisement had been submitted to the Exchange, it would have been reviewed according to the standards set forth in 2 CCH N.Y.S.E. Guide ¶ 2474A, as follows:

> "In reviewing member organization material -- as specified in Rules 471, 472 and 473 -- the New York Stock Exchange is concerned with the manner -- or form -- in which information and opinions are presented. The Exchange cannot, of course, be responsible for the accuracy and completeness of factual information, nor the opinions of member organizations, in the material reviewed."

The Disciplinary Proceedings Against Schwabacher

17. Plaintiffs assert that the Exchange failed to enforce certain of its rules and permitted Schwabacher to continue in operation following such rule violation. Specifically, it is alleged that Schwabacher and its general partners were subject to

discipline under "Rule 440 and Securities and Exchange Commission Rule 17a-3 (books and records), Rule 402 and Securities and Exchange Commission Rule 8c-1 (hypothecation of customers' securities), Rule 342 (supervision and control), Rule 401 (good business practice) and Rule 417.11 (audits)" (complaint ¶¶ 45-48). It is true that the firm of Schwabacher & Co. and Albert E. Schwabacher, Jr. agreed to a stipulation that Exchange Rules 440, 342, 401, 402 and 417.11 as well as SEC Rules 17a-3 and 8c-1 had been violated. In fact most of the allegations contained in paragraphs 15-23 of the complaint concerning Schwabacher's history of operational difficulties appear to have been taken from the Exchange's report containing its disciplinary charges against Schwabacher. These violations arose from the inadequacies and inaccurate condition of Schwabacher's records which are described above. The Exchange took proper steps to remedy this situation and to aid Schwabacher in overcoming these problems. In addition, the Exchange imposed disciplinary measures in accordance with its Constitution and Rules.

18. A report dated February 17, 1969 containing a statement of the facts, charges and admission of violations of the above rules was prepared by the Exchange's Department of Member Firms. After the 30-day period for answers permitted by Article XIV, Section 14 of the Exchange Constitution, these charges were submitted to the Advisory Committee of the Board of Governors of the Exchange. On April 3, 1969 the Advisory Committee reported its recommendations for discipline to the Board of Governors. The recommendation was that the firm be fined $50,000 for these violations and that Albert E. Schwabacher, Jr. be fined $25,000, censured before a meeting of the Board of Governors and prohibited from undertaking any duties in the

supervision of back-office operations of any member organization for five years without the prior approval of the Exchange. On April 10, 1969 Mr. Schwabacher appeared before the Board of Governors and the censure was administered. Copies of the February 17, 1969 report, the April 3, 1969 report and the censure, describing the violations and the penalties administered, are annexed hereto as Exhibit R.

19. The former partners of Schwabacher who were disciplined by the Exchange in April 1969 were not then in charge of the combined firm of Blair. Indeed, Mr. Schwabacher was specifically denied the right to exercise any supervisory duties for back-office operations for at least five years. Moreover, the Commission brought similar charges for violations of Section 17(a) of the Securities Exchange Act of 1934 and SEC Rules 17a-3 and 17a-5 and Section 8(c) of the Exchange Act and SEC Rule 8c-1(a)(2). On August 29, 1969 the Commission released its findings, opinion and order fully describing the same failures of Schwabacher and of its management to meet reco. keeping requirements, which were the basis of the Exchange's disciplinary measures. These findings, contained in Securities Exchange Act Release No. 8677, also ordered that Mr. Schwabacher be prohibited from undertaking supervisory duties with respect to back-office operations. A copy of the Commission's decision and a copy of a Wall Street Journal article of August 29, 1969 reporting on the Commission's action are annexed hereto as Exhibit S. These actions by the Exchange demonstrated that it performed its duty to impose discipline upon Schwabacher and its management for violations of SEC and Exchange rules.

20. Plaintiffs assert that the Exchange failed to enforce Rule 417 which requires an annual audit of a member organization by an independent public accountant, alleging that such

requirement was not met by Schwabacher in 1968 (complaint, ¶ 26). Schwabacher's independent public accountants conducted an examination of Schwabacher's answers to a financial questionnaire as of August 30, 1968. Following that examination, the accountants rendered an opinion which concluded that the answers to the financial questionnaire "do not present fairly the overall financial position of Schwabacher & Co. on August 30, 1968" (Exhibit H above). Schwabacher's failure to comply with Rule 417 was considered in the disciplinary charges brought against the firm and the firm was, in fact, disciplined for violation of Rule 417.11, as described in paragraphs 17-19 above.

21. Plaintiffs also assert that the Exchange failed to discipline Schwabacher for violations of the net capital requirements of Exchange Rule 325 (see complaint, ¶ 23). This assertion is the result of plaintiffs' misunderstanding of Rule 325 and the Exchange's practice with respect to short stock record differences. The memorandum of charges prepared by the Department of Member Firms states that "Schwabacher & Co. has had short securities differences which if charged against their net capital would have resulted in violations of Rule 325" (Exhibit R, February 17 report at 5). It was the Exchange's practice to discuss short stock record differences with the member firm's management and its independent public accountant and to discover whether such differences were merely bookkeeping errors which would, when resolved, result in no loss to the firm. If such were the case, the Exchange would not charge the net capital of the member firm with the short market value of the differences but would encourage the member firm to increase its capitalization until such time as these differences were resolved. As pointed out in the memorandum of charges, this practice was followed with Schwabacher and on

several occasions the Exchange required Schwabacher "to raise substantial excess net capital in view of their short differences and they have done so" (Exhibit R, February 17 report at 6).

The Use of Knowledgeability Letters

22. Plaintiffs assert that the Exchange should have required "knowledgeability letters" from capital contributors to Blair (complaint, ¶ 79-81). Knowledgeability letters were submitted to the Exchange by certain capital contributors at the request of the Exchange staff. The decision to request such letters was an ad hoc decision that was made by a person on the Exchange staff concerned with the oversight of the particular firm. These ad hoc decisions were under informal standards which developed as time went along and were not made pursuant to any rule of the Exchange. Indeed, no Exchange rule refers to the knowledgeability letter or to the circumstances under which they were requested. Such knowledgeability letters were used in connection with capital contributions to Schwabacher during 1968 and, although one was considered when Blair proposed to make a capital loan to Schwabacher in November 1968, none was received with respect to Blair during 1968 or 1969.

23. The knowledgeability letter was used in connection with Schwabacher after the Exchange had imposed operating restrictions. On March 28, 1968 I sent a form of a knowledgeability letter to Schwabacher and stated that the letter would be "required in connection with any new capital contributors or renewals of capital from others than members or allied members during the special restrictions." In June 1968, the Exchange requested letters in the form as outlined in the March 28, 1968 letter in connection with capital borrowings reported to the Exchange. At that time the Exchange advised Schwabacher that it would require knowledgeability letters from "all contributors of capital" to

Schwabacher. (See letter dated March 28, 1968, form of knowledgeability letter and letter dated June 25, 1968 annexed hereto as Exhibit T.)

24. During 1968 and 1969 knowledgeability letters were not required from capital contributors to Blair. A draft of a knowledgeability letter which refers to a subordinated loan to Blair and to a "proposed investment by [Blair] into Schwabacher & Co." was prepared in connection with the proposal by Blair to lend capital to Schwabacher (Exhibit U hereto). That proposed loan was discussed with the Exchange in late November 1968 in a meeting with William Lendman, President of Blair. My memorandum of that meeting (Exhibit J above) states: "Blair will add $6 million of capital from present participants, and will loan $6 million to Schwabacher for 6 months." Because Schwabacher was subject to restrictions and knowledgeability letters were required from capital contributors to Schwabacher, a draft knowledgeability letter was prepared for the subordinated loan to Blair which was to be the basis for Blair's loan to Schwabacher. This draft would have contained an acknowledgment by the subordinated lender to Blair that he was aware of restrictions on Schwabacher and of Blair's proposal to lend capital to Schwabacher. The draft was based upon the considerations which led to requesting such letter from Schwabacher capital contributors, the fact that Blair proposed to become such a capital contributor by increasing its own capital and lending it to Schwabacher, and the fact that the subordinated lender was making a loan to Blair for this limited and specific purpose. The proposed loan from Blair to Schwabacher was ultimately not made and a $3 million loan from the Union Bank of California was arranged. The Exchange learned of this decision on December 2, 1968 at the meeting with the

staff of the Securities and Exchange Commission described above. During that meeting Mr. Lendman advised us by telephone that Blair might loan money to Schwabacher for a longer period. Later that same day we were informed that Schwabacher had decided to proceed with a $3 million loan from the Union Bank of California in order to obtain more flexibility in continuing merger discussions with Blair. (See Exhibit K above.) As a result, the draft knowledgeability letter was not used.

25. No knowledgeability letters were requested or obtained at Blair in 1969 because no unusual event or "risk factor" had occurred which would lead one of the persons at the Exchange responsible for surveillance of Blair to conclude that such letter should be required from any class of investors. This judgment is fully supported by the information concerning Blair available to the Exchange in 1969, including the fact that Blair in 1969 was a growing securities firm with a strong capital position and excellent management as discussed above. The factors supporting the Exchange's decision not to object to the acquisition of Schwabacher by Blair discussed above and the facts revealing the substantial progress made in resolving operational difficulties in the Schwabacher division discussed below also support this judgment. Of course, the Exchange had no reason to believe at any time that persons who made capital contributions to Blair were not provided by Blair with the financial and operating data which was appropriate or necessary for them to reach their decision to purchase Blair securities.

Developments After the Acquisition

26. After the acquisition, the Schwabacher Division of Blair continued to discuss the improvement in its operating conditions with the Exchange. Certain restrictions were modified

or rescinded based upon this improvement in May 1969. On September 6, 1969 the restrictions and the improvements in the operations of Schwabacher were reviewed. An Exchange memorandum dated September 4, 1969 concluded:

> "It would appear from the foregoing that the operations problems of the Schwabacher Division have been substantially solved and there appears to be no reason why our restrictions should not be modified significantly or in some cases removed completely."

On September 8, 1969 I wrote to counsel for Blair to advise him that restrictions on the Schwabacher Division of Blair were being modified or removed. (See Exhibit V hereto: letter dated May 8, 1969; memorandum dated September 4, 1969; letter dated September 8, 1969.)

27. In May 1969 William M. Lendman resigned as Blair's president. Mr. Lendman's resignation meant that Blair had lost an exceedingly capable administrator who had been instrumental in guiding Blair through its period of growth and expansion.

28. Plaintiffs object to the manner in which the 1969 audit of the combined firms was conducted and allege that Blair failed to comply with Exchange rules by utilizing an audit which was made of two separate divisions at two separate times in 1969 (complaint, ¶ 50). Blair's auditors requested the Exchange to permit it to audit the books and records of the Schwabacher division of Blair in June 1969 and to audit the books and records of the Blair division in September 1969. This request was made in a letter dated May 7, 1969 and was based upon the absence of any significant intercompany dealings and the auditors' assurance that presentation of the financial information would be clear and concise. This proposal was considered by the Exchange as reflected in a memorandum dated May 19, 1969. If the audit were to be conducted as requested, the approval of the Commission was

required. Mr. Andrew Barr, chief accountant of the Commission, was consulted and advised the Exchange that the Commission would take no exception to the separate audits of the two divisions of Blair. (See Exhibit W hereto: letter dated May 7, 1969; memorandum dated May 19, 1969; memorandum dated May 23, 1969.)

29. Plaintiffs assert that Blair devised a plan to obtain additional subordinated capital in 1969 which was submitted to and approved by the Exchange (complaint, ¶ 35-39). Blair's Stock Purchase Plan, which permitted purchases of common and preferred stock, had been in effect since 1963. In August 1969 Blair proposed an amendment to its Stock Purchase Plan providing for adjustments based on changes in book value at the time a subscription pursuant to the plan was terminated or cancelled; the Exchange approved that proposed amendment. (See Exhibit X: letter dated August 28, 1969; letter dated September 12, 1969.) It is impossible to understand how plaintiffs were adversely affected by the Stock Purchase Plan which was adopted in 1963 or by the amendment in 1969.

30. The events which ultimately contributed to the collapse of the merged firms did not appear until late in 1969 -- after the plaintiffs had purchased stock of Blair and subordinated their accounts. In the latter part of 1969, Blair, which had maintained a separate back office, converted its entire operations to the Midwest Stock Exchange Service Bureau. This conversion would place both divisions of Blair on the same recordkeeping system. Although the Exchange recommended that Blair accomplish this conversion on a branch-office by branch-office basis to insure that no loss of control of recordkeeping resulted, Blair nevertheless decided to make the conversion of its branch offices to the Midwest system en masse. The Exchange was not informed that this method had been adopted until significant operating problems began to emerge. Blair had reported a satisfactory capital ratio

in its answers to special operations questionnaires and financial questionnaires from May 31, 1968 until its answers to the special operations questionnaire for December 31, 1969 (Exhibit Y) revealed a violation. Those answers, dated February 10, 1970, reported a ratio of 2673%, and noted that "both aggregate indebtedness and capital charges have been seriously inflated as a result of conversion to the Mid-West System." The answers reported a loss for eleven months of the current fiscal year of $6,397,343.

31. In a letter to Blair dated March 16, 1970, the Exchange stated that it was "essential that Blair & Co. take immediate steps to inject new capital to the extent of not less than $3,500,000." A memorandum from the Exchange files dated April 14, 1970 indicates that Blair had taken certain steps, including liquidation of collateral underlying secured demand notes, negotiation of an additional loan, and sale of one of its Exchange memberships, which resulted in an adjusted capital ratio of 1519% with $1,647,382 in excess net capital. In April 1970 Blair was experiencing a loss of about $800,000 per month and projected that it could not reach a break-even point until February 1971. Blair was urged by the Exchange at that time to outline the steps necessary to balance its revenues and expenses by June 1, 1970. A merger between Blair and F.I. duPont & Co. was also considered in May 1970 but was not deemed advisable for the reasons set forth in a memorandum dated May 13, 1969. A proposal submitted by Blair for a merger with Thomson & McKinnon was found unacceptable because it involved a transfer of Blair's capital to Thomson & McKinnon. Finally, on June 15, 1970, a meeting with representatives of major stock exchange firms was held to discuss their interest in acquiring all or substantial segments of Blair. After that meeting, arrangements were made to sell branch offices of Blair to other member firms and Blair was liquidated. (Copies of

the letters and memoranda evidencing these events are annexed as Exhibit Z.)

Conclusion

32. As previously indicated, the Exchange took the steps that it considered necessary and sufficient to correct the problems which Schwabacher faced following the conversion of its back-office operations to the recordkeeping system of the Midwest Stock Exchange Service Bureau and to assist Schwabacher in gaining control of its operations in order to protect the accounts of public customers. The Exchange approved the acquisition of Schwabacher by Blair which because effective at the close of business on February 28, 1969. The Exchange had no basis for objecting to that acquisition and believed that Blair was a well-managed, growing securities firm and that the combination of Schwabacher and Blair would succeed. The problems which led to the ultimate demise of Blair in August 1970 were intervening causes which neither the Exchange nor anyone else could anticipate. Those intervening causes did not occur until late 1969 after the operational problems of the Schwabacher division of Blair had been resolved and most of the restrictions imposed on that division had been removed. The intervening causes consisted of the decision by Blair to convert en masse its own back office to the recordkeeping system of the Midwest Stock Exchange Service Bureau. This conversion was followed by a precipitous drop in the volume of transactions and in the market prices of securities. The Exchange took steps to resolve the problems created by record-keeping difficulties combined with a loss in profitability, but Blair was unable to overcome these difficulties and was eventually liquidated. These regulatory actions were proper exercises of the

Exchange's duties to regulate Blair and to protect the accounts of public customers.

33. I respectfully submit that the Exchange properly discharged its duties and responsibilities under the Exchange Act in connection with its supervision of Blair and Schwabacher, that no representations whatever were made by the Exchange to either of the plaintiffs concerning their purchases of Blair stock or subordination of their accounts, and that the Exchange had no knowledge of any fraudulent conduct in respect to plaintiffs' purchases of Blair stock. Accordingly, judgment should be entered dismissing each of the claims in the complaint as against the Exchange.

Robert M. Bishop

Sworn to before me
on December 15, 1975

Notary Public

ALFRED J. PARISI
Notary Public, State of New York
No. 41-4505359
Qualified in Queens County
Commission Expires March 30, 1977

Exhibit A

219

AD-2
AD-10B

NEW YORK STOCK EXCHANGE

ALLIED MEMBER OR NON-MEMBER APPLICATION
(LONG FORM)

INSTRUCTIONS

1. Print or type answers
2. Answer *all* questions (state "None" if appropriate).
3. Answer questions *fully*, attaching separate signed sheets or letter of explanation, if necessary.
4. File two copies with Office of the Secretary.
5. Also file two copies of Financial Supplement (Form AD-2A or AD-2B).
6. Rules 17a-3 and 17a-4 — as amended — under the Securities Exchange Act of 1934, require retention of a copy of this application by the Member Organization.

Attention of applicants is drawn to the following provisions of Article XIV of the Constitution of the Exchange:

Sec. 2. Whenever the Board of Governors, by the affirmative vote of a majority of the Governors then in office, shall adjudge that a member prior to his application for membership, or an allied member prior to the approval of him as a partner in a member firm or as a stockholder in a member corporation, had been guilty of a fraudulent or dishonest act and that the facts and circumstances thereof were not disclosed to the Exchange on his application for membership, or on the application for approval, as the case may be, such member or allied member shall be expelled.

Sec. 3. A member or allied member who shall be adjudged guilty, by the affirmative vote of a majority of the Governors then in office, of making a misstatement upon a material point to the Board of Governors or to a committee authorized thereby or to the Board of Directors of Stock Clearing Corporation or of making on his application for membership, or on the application for approval of him as a partner in a member firm or as a stockholder in a member corporation, a material misstatement to the Exchange may be suspended or expelled as the Board may determine.

By filing this application, an applicant for approval as a limited partner, holder of non-voting stock, holder of debentures, or in any other non-member status requiring approval by the Board of Governors, agrees that approval may be denied or, if granted, may be suspended or withdrawn by the Exchange at any time.

Application for approval by the Board of Governors

of JAMES ARNEIL as
(Give name as it should be shown in Exchange publications.)

- ☐ an allied member of the New York Stock Exchange and a holder of voting stock
- ☐ an allied member of the New York Stock Exchange and a general partner
- ☒ a holder of non-voting stock
- ☐ a limited partner
- ☐ a holder of debentures

☒ Limited Partner

of the member organization, Blair & Co.

to be effective On Approval

Address at which applicant will make his office 605 Doneen Bldg., Wenatchee, Washington 98801

I submit the following true, complete and accurate statement of my personal and business history:

1. Full name James Arneil . Age 55
2. Home address 921 Bryan Street, Wenatchee, Washington 98801
3. Prince Rupert, B.C. (Place of birth) January 29, 1914 (Month Day-Year of birth) 532-07-2158 (Soc. Sec. No.)
4. I am a ~~naturalized citizen~~ citizen of the United States.
   ~~FOREIGN~~
   (If a naturalized citizen, submit certificate of naturalization. If U. S. citizenship is claimed because of birth of American parents residing at time of birth in a foreign country, submit proof of such residence and citizenship.)
5. If married, ~~maiden name~~ wife's maiden name Kathleen O'Connor
6. Father's name and, if living, his address T. H. Arneil, 32 Alamar Rd., Soquel, Calif.

220

7. I am or have been a member of the following clubs, societies or fraternal organizations:
(Give names and addresses)

Washington State Bar Association, Seattle, Washington

Wenatchee Golf & Country Club, Wenatchee, Washington

Rotary Club, Wenatchee, Washington

8. I have attended the following educational institutions: (*start with elementary schools*)

From Mo.	From Yr.	To Mo.	To Yr.	Name and Address of Institution	Day or Evening	Graduate (Yes or No)	Degree
				SEE ATTACHED			

SUBSTANTIALLY ALL TIME MUST BE ACCOUNTED FOR WHEN ANSWERING STATEMENTS 8 AND 9. GIVE RESIDENCE ADDRESS FOR SUCH TIMES AS YOU WERE NEITHER ATTENDING SCHOOL NOR ENGAGED IN BUSINESS.

9. The following is a complete, consecutive statement of my business history since leaving school or college: (For service with the armed forces, give dates, branch of service, rank or rate, identification number and type of discharge).

From Mo.	From Yr.	To Mo.	To Yr.	Name of Business and Address (Street, City and State)	Nature of Business	Position Held	Reason for Terminating Connection
				SEE ATTACHED			

ALL BUSINESS CONNECTIONS NOT SHOWN IN STATEMENT 9 MUST BE SHOWN IN ANSWER TO STATEMENT

10 (a) I am at present a proprietor, partner, director, officer, controlling stockholder, employee, or member of the following business organizations: (Give full details including address, type of business, date relationship was established, your position, amount of time devoted and compensation received.)

SEE ATTACHED

(b) I have at present a financial interest (through direct or indirect stock or bond ownership, through outstanding loans, or otherwise) in the following companies engaged in a securities or financial or kindred business: (Give full details)

NONE

(c) I was formerly a proprietor, partner, director, officer, employee, or member of the following business organizations: (Give dates of connection, type of business, address and position held.)

Columbia River Orchards, Inc., P.O. Box 1706, Wenatchee, Washington May, 1955-May, 1957; orchard ownership; position, general manager and director

11 (a) I have, or have had during the past ten years, transactions with the following brokerage houses, either in my own name or in another style: (Give addresses. State style used for transactions not conducted in own name.)

SEE ATTACHED

(b) I have, or have had during the past ten years, accounts or other dealings (including loans granted or denied) with the following banks or other financial organizations, either in my own name or in another style: (Give addresses. State style used for accounts or loans not carried in own name.)

Seattle-First National Bank, Wenatchee Valley Branch, Wenatchee, Wn.
National Bank of Commerce, Columbia Valley Branch, Wenatchee, Wn.
Wenatchee Federal Savings and Loan Association, Wenatchee, Wn.

ANSWER "YES" OR "NO" TO QUESTIONS 12 THROUGH 21.

12. Have you ever used or been known by any name or style other than as shown in Statements 1 and 11 above? — No

13. (a) Have you ever been refused a bond by a surety company? — No

(b) Has any surety company paid out any funds on your coverage or cancelled your coverage? — No

14. Have your services ever been terminated by any employer? — No

15. In your previous business connections or employment in any capacity, has any transaction under your attention ever been the subject of a legal proceeding or a written complaint? — No

16. (a) Have you ever been a member, or associated as a principal with a member, of any securities or commodity exchange? — No

(b) Have you ever been a member, or associated as a principal with a member, of the National Association of Securities Dealers, Inc., or any other association of security or commodity brokers, dealers, investment bankers or investment advisors? — No

(c) Has any application for your approval by such an exchange or association, as a member or otherwise, ever been denied or withdrawn? — No

(d) Have you ever been associated (as a principal, employee or otherwise) with any organization which, or a principal of which, to your knowledge was refused membership or withdrew an application for membership in such an exchange or association? — No

17 (a) Have you ever been expelled, suspended or otherwise disciplined by the Securities

association?

17. (a) Have you ever been expelled, suspended or otherwise disciplined by the Securities and Exchange Commission or have your activities ever been the subject of an investigation by the Commission? — No

(b) Have you ever been expelled, suspended, fined, censured or otherwise disciplined by a securities exchange, commodity exchange, the National Association of Securities Dealers, Inc., or any other association of security or commodity brokers, dealers, investment bankers or investment advisors? — No

(c) Have your activities ever been the subject of an investigation by such an exchange or association, or by or on behalf of any State securities commission? — No

(d) Have you ever been associated (as a principal, employee or otherwise) with any organization which, or a principal of which, to your knowledge was expelled, suspended or otherwise disciplined by such an exchange or association or by the Securities and Exchange Commission? — No

18. (a) Have you ever been denied a license, franchise, permit, certificate or registration required to engage in the securities, commodities, or any other business or profession? — No

(b) Has any such license, franchise, permit, certificate or registration which you have held ever been suspended or revoked? — No

(c) Have you ever been prohibited, temporarily or otherwise, from engaging in the securities, commodities, or any other business or profession, or from dealing in any particular security or commodity? — No

(d) Have you ever been associated with any organization which, or a principal of which, to your knowledge has been prohibited from engaging in any business or profession or from dealing in any particular security or commodity, or whose license, franchise, permit, certificate or registration required to engage in any business or profession has been denied, suspended or revoked? — No

19. (a) Have you ever been arrested for, or formally charged with, the violation of any criminal law (other than minor traffic violations) or have you ever been accused before a court-martial? — No

(b) Are you now or have you ever been involved as a party in any other proceeding before a court, an arbitration tribunal, an administrative agency, or other regulatory body? — Yes See below

20. Have any judgments, liens, attachments or other encumbrances ever been taken or filed against you? — No

21. Have you, or any organization with which you have been associated, ever failed in business, made a compromise with or an assignment for the benefit of creditors, taken advantage of any Exemption Law, or been a party to any voluntary or involuntary bankruptcy or insolvency proceeding? — No

IF YOUR ANSWER TO ANY OF QUESTIONS 12-21 IS "YES", PLEASE GIVE FULL DETAILS (Attach separate signed sheet if necessary):

Question No.	
19 (b)	Plaintiff in pending action against Reynolds & Co. and Ralph E. Carpenter, Jr., New York, for damages in connection with stock transactions in 1963. U. S. District Court, Southern Division, New York. Cause No. 65 Civil, 944

(OVER)

8. Educational Institutions:

From Mo. Yr.	To Mo. Yr.	Name and Address	Day or Evening	Graduate (Yes or No)	Degree
9/1919	6/1921	Alki Grade School Seattle, Washington	Day	No	
9/1921	6/1922	Peshastin Grade School Peshastin, Washington	Day	No	
9/1922	6/1925	John B. Allen Grade School Seattle, Washington	Day	No	
9/1925	6/1926	Whitman Grade School Wenatchee, Washington	Day	No	
/1926	6/1927	John B. Allen Grade School Seattle, Washington	Day	Yes	Eighth grade diploma
/1927	6/1929	Ballard High School Seattle, Washington	Day	No	
/1929	6/1931	Wenatchee High School Wenatchee, Washington	Day	Yes	High school diploma
/1932	6/1939	University of Washington Seattle, Washington	Day	Yes	B.A. 1936 Juris Doctor, 1939

Jon Newman

9. Business History:

From Mo. Yr.	To Mo. Yr.	Name and Address	Nature of Business	Position Held	Reason for Terminating Connection
6/1931	1/1932	Pacific Fruit & Produce Co. Wenatchee, Washington	Fruit Warehouse	Warehouse employee	Attend college
9/1939	10/1940	Crollard & O'Connor Seattle First Nat'l Bank Bldg., Wenatchee, Wn.	Attorneys	Attorney	Appointment F.B.I.
10/1940	9/1944	U.S. Dept. of Justice Federal Bureau of Investigation, Washington, D.C.	Investigative	Special Agent F.B.I.	Commenced U.S.N.
9/1944	6/1946	U. S. Navy	Military	Lt. J.G. SC(S) Serial # 425638 Discharge-Certificate of Satisfactory Service	Release
6/1946	11/1948	Chelan County Wenatchee, Washington	Legal	Deputy Prosecuting Attorney and Prosecuting Attorney	Enter private law practice
11/1948	9/1963	Shiner & Arneil Savings & Loan Bldg. Wenatchee, Washington	Attorneys	Partner	New partnership
9/1963	1/1966	Shiner, Davis & Arneil Doneen Building Wenatchee, Washington	Attorneys	Partner	New partnership
1/1966	1/1969	Davis, Arneil & Dorsey same address	Attorneys	Partner	New partnership
1/1969	Present	Davis, Arneil, Dorsey & Kight Same address	Attorneys	Partner	New partnership

10 (a) Business Organizations:

Name and Address	Type of Business	Date connection was established	Position held	Time	Compensation
Davis, Arneil, Dorsey & Kight 605 Doneen Bldg. Wenatchee, Washington	Law firm	Jan. 1969	Partner	80%	Approx. $50,000.00
General Telephone of Northwest Everett, Washington	Telephone business	Mar. 1962	Director	Bi-monthly meetings	$1,200.00
Orondo Orchards, Inc. P.O. Box 1706 Wenatchee, Washington	Orchard ownership	May, 1954	Director & one-half owner	10%	*
* Compensation as director					$1,500.00 annually
One-half of earnings distributed, approx.					20,000.00 annually
Highland Orchards, Inc. P.O. Box 1706 Wenatchee, Washington	Orchard ownership	Feb. 1965	Director & one-half owner & secretary	10%	*
* Compensation as director					$ 1,500.00 annually
One-half of earnings of corporation, approx.					60,000.00 annually

- - - - - - - - - - -

11 (a) Transactions with Brokerage Houses:

Walston & Co.	Seattle, Washington
Harris Upham & Co.	Seattle, Washington
Foster & Marshall	Seattle, Washington
E. F. Hutton & Co.	New York, N.Y.
Reynolds & Co.	New York, N.Y.
Blair & Co.	New York, N.Y.

(Copy Receipt) (Clerk's Date Stamp)

Superior Court of Washington for CHELAN County

I, MURIEL E. ROATH, County Clerk and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, which Court is a Court of record with a Clerk and a Seal, having common law jurisdiction; do hereby certify that David J. Dorsey whose name is subscribed to the certificate attached to and made a part of the annexed instrument was on the 15 day of April, 19 69, the date on which he signed the same, a duly appointed and qualified notary public in and for said County and State and authorized by law to administer oaths and take acknowledgments therein. That I am acquainted with his signature and hand writing and verily believe that the signature subscribed to said certificate is his signature. And that said certificate is made and executed according to the laws of the State of Washington.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 15 day of April, 19 69.

MURIEL E. ROATH
Clerk.

By Margaret Smith
Deputy.

This blank is guaranteed against commercial alteration, which guarantee is issued by Washington Legal Blank Co. (Certificate of Official Character) Form No. 1413P

227

Question No.	

22. What will be your specific activities (if any) with the member organization?

None

23. Other than as shown in Statement 10, do you intend to devote your time exclusively to the business of the member organization? (Answer "Yes" or "No".) No

24. For purposes of determining examination requirements in connection with joint New York Stock Exchange –National Association of Securities Dealers, Inc. examinations, please indicate whether or not you have ever been registered with the National Association of Securities Dealers, Inc.? (Answer "Yes" or "No".)

No

I RECOGNIZE THAT THE STATEMENTS HEREIN (AND IN EVERY SUPPLEMENTARY SHEET ATTACHED HERETO) WILL BE VERIFIED BY INVESTIGATION, AND HEREBY DECLARE THAT THEY ARE TRUE, COMPLETE AND ACCURATE.

In consideration of the approval by the Board of Governors of my firm's application for me to become an allied member of the New York Stock Exchange and a general partner or holder of voting stock, I hereby agree that unless the Exchange waives its required basic allied member examination, I will, within three months following (i) one year after becoming an allied member without having passed such basic examination or (ii) my failure to pass such basic examination after not more than three attempts, whichever occurs first, retire as a general partner of, or dispose of all of my voting stock in my member organization.

I further state that I have read the Constitution and Rules of the Board of Governors of the New York Stock Exchange and I hereby make application to become an allied member of the Exchange. I hereby pledge myself to abide by the Constitution and Rules of the Board of Governors of the New York Stock Exchange as the same have been or shall be from time to time amended, and by all rules and regulations adopted pursuant to the Constitution, this pledge to become effective in the event of, and forthwith upon, the approval of this application.

*The language enclosed in asterisks applies only to proposed allied members.

Date April 15, 1969

James Arneil
(Signature of Applicant)

State of Washington
County of Chelan } ss.:

On the 15th day of April in the year 19 69

before me personally came JAMES ARNEIL to me known, and known to me to be the person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Notary Public in and for the State of Washington, residing at Wenatchee

NOTE: If executed outside of New York State, attach Certificate of County Clerk or other appropriate official as to the authority of the Notary Public or other official taking the acknowledgment.

BEST COPY AVAILABLE

AO-10

CORPORATION

File 2 Cop'ies

NEW YORK STOCK EXCHANGE

Financial Supplement to Application of

JAMES ARNEIL, Dated ~~April 25~~ May 20, 1969

Concerning the Member Corporation,

BLAIR & Co., INC

1. My net worth (including equities in real estate, securities and other property) is in excess of $ 1,000,000.00

STRIKE OUT INAPPLICABLE WORDS IN BRACKETS. A STATEMENT ANSWERED "WILL NOT" REQUIRES NO FURTHER ANSWER.

2. I [~~will~~] [will not] be a director of the corporation.

3. I [~~will~~] [will not] be an officer of the corporation. (State office to be held, if any): _____

4. I [will] [~~will not~~] own 300 shares of voting stock representing 0.166% of the voting stock of the corporation for which I will pay $ 1,134. representing [par] [book] [agreed] value.

5. I [will] [~~will not~~] own 73 shares of non-voting stock representing 0.116% of the non-voting stock of the corporation for which I will pay $ 7,300. representing [par] [book] [agreed] value.

6. I [~~will~~] [will not] own [_____ debentures bearing _____% interest for which I will pay $_____] [_____ participating debentures for which I will pay $_____].

7. I [will] [~~will not~~] make a subordinated loan to the corporation of $ 150,000 - in [cash] [market value of securities], for which I will receive interest at the rate of 3 %. The subordinated loan will expire _____

8. I [will] [will not] subordinate my claim to the equity in my account with the corporation, captioned _____, which has a [debit] [credit] balance of $_____ and long securities with a market value of $_____. As compensation therefor, I will receive interest at the rate of _____%. The subordination of my claim will expire _____

9. (a) The corporation [~~will~~] [will not] pay me a salary of $_____ per _____

(b) The corporation [~~will~~] [will not] guarantee me compensation of $_____ a year, in salary and/or participation in corporate profits.

10. (a) I have not borrowed, nor will I borrow, and no one other than myself has any interest in, any of the cash or securities used to purchase the corporation's stock or debentures, loaned to the corporation, or included in my subordinated account with the corporation (as the case may be) [EXCEPT AS FOLLOWS]:

NO EXCEPTIONS

229

(b) I have not given, nor will I give without the prior approval of the Exchange, any note, obligation, acknowledgment, assignment or other agreement with respect to the stock or debentures to be purchased, the property to be loaned, or the property included in my subordinated account (as the case may be); nor with respect to any interest or compensation which I will receive from the corporation [EXCEPT AS FOLLOWS]:

NO EXCEPTIONS

(c) (FOR PROPOSED ALLIED MEMBERS ONLY) I have no other loans or borrowings reportable under Rule 420 of the Board of Governors [EXCEPT AS FOLLOWS]:

(The space above may be used for the fuller explanation of any Statement in this Supplement.)

(Signature of Applicant)

I certify that the answers to Statements 2 through 9 above are correct.

(Signature of Director of Member Corporation)

AD-2L
AD-10B

NEW YORK STOCK EXCHANGE

ALLIED MEMBER OR NON-MEMBER APPLICATION
(LONG FORM)

INSTRUCTIONS

1. Print or type answers
2. Answer *all* questions (state "None" if appropriate).
3. Answer questions *fully*, attaching separate signed sheets or letters of explanation, if necessary.
4. File two copies with Office of the Secretary.
5. Also file two copies of Financial Supplement. (Form AD-2A or AD-2B).
6. Rules 17a-3 and 17a-4 — as amended — under the Securities Exchange Act of 1934, require retention of a copy of this application by the Member Organization.

Attention of applicants is drawn to the following provisions of Article XIV of the Constitution of the Exchange:

Sec. 2. Whenever the Board of Governors, by the affirmative vote of a majority of the Governors then in office, shall adjudge that a member prior to his application for membership, or an allied member prior to the approval of him as a partner in a member firm or as a stockholder in a member corporation, had been guilty of a fraudulent or dishonest act and that the facts and circumstances thereof were not disclosed to the Exchange on his application for membership, or on the application for approval, as the case may be, such member or allied member shall be expelled.

Sec. 3. A member or allied member who shall be adjudged guilty, by the affirmative vote of a majority of the Governors then in office, of making a misstatement upon a material point to the Board of Governors or to a committee authorized thereby or to the Board of Directors of Stock Clearing Corporation or of making on his application for membership, or on the application for approval of him as a partner in a member firm or as a stockholder in a member corporation, a material misstatement to the Exchange may be suspended or expelled as the Board may determine.

By filing this application, an applicant for approval as a limited partner, holder of non-voting stock, holder of debentures, or in any other non-member status requiring approval by the Board of Governors, agrees that approval may be denied or, if granted, may be suspended or withdrawn by the Exchange at any time.

Application for approval by the Board of Governors

of VERNON A. STOCKWELL as
(Give name as it should be shown on Exchange publications.)

- ☐ an allied member of the New York Stock Exchange and a holder of voting stock
- ☐ an allied member of the New York Stock Exchange and a general partner
- ☑ a holder of non-voting stock
- ☐ a limited partner
- ☐ a holder of debentures
- ☐ _____

of the member organization, _____

to be effective _____

Address at which applicant will make his office 1101 Cedar Street, Wenatchee, Washington 98801

I submit the following true, complete and accurate statement of my personal and business history:

1. Full name Vernon A. Stockwell Age 50
2. Home address 101 Cedar Street, Wenatchee, Washington 98801
3. Holcombe, Wisconsin (Place of birth) August 17, 1918 (Month-Day-Year of birth) 514-09-9843 (Soc. Sec. No.)
4. I am a { native born citizen of the United States. / ~~naturalized citizen of the United States.~~ / citizen of _____

(If a naturalized citizen, submit certificate of naturalization. If U. S. citizenship is claimed because of birth of American parents residing at time of birth in a foreign country, submit proof of citizenship. If a citizen of foreign country, submit proof of entry into United States.)

5. If married, ~~maiden name~~ / wife's maiden name Clara E. Weasea
6. Father's name and, if living, his address Herbert E. Stockwell, Wenatchee, Wash.

231

7. I am or have been a member of the following clubs, societies or fraternal organizations:
(Give names and addresses)

Washington State Horticultural Association, Yakima, Washington

8. I have attended the following educational institutions: (*start with elementary schools*)

From Mo.	From Yr.	To Mo.	To Yr.	Name and Address of Institution	Day or Evening	Graduate (Yes or No)	Degree
9/	1924	6/	1928	Gaines School, Entiat Valley Entiat, Washington	Day	No	
9/	1928	6/	1929	Elementary School Anacortes, Washington	Day	No	
9/	1929	6/	1932	Gaines School, Entiat Valley Entiat, Washington	Day	Yes	Grade School diploma
0/	1933	1/	1934	Entiat High School Entiat, Washington	Day	No	

SUBSTANTIALLY ALL TIME MUST BE ACCOUNTED FOR WHEN ANSWERING STATEMENTS 8 AND 9. GIVE RESIDENCE ADDRESS FOR SUCH TIMES AS YOU WERE NEITHER ATTENDING SCHOOL NOR ENGAGED IN BUSINESS.

9. The following is a complete, consecutive statement of my business history since leaving school or college: (For service with the armed forces, give dates, branch of service, rank or rate, identification number and type of discharge).

From Mo.	From Yr.	To Mo.	To Yr.	Name of Business and Address (Street, City and State)	Nature of Business	Position Held	Reason for Terminating Connection
				SEE ATTACHED			

ALL BUSINESS CONNECTIONS NOT SHOWN IN STATEMENT 9 MUST BE SHOWN IN ANSWER TO STATEMENT

232

ALL BUSINESS CONNECTIONS NOT SHOWN IN STATEMENT [illegible] SHOWN IN ANSWER TO STATEMENT [illegible]

9. Business History:

From Mo. Yr.	To Mo. Yr.	Name and Address	Nature of Business	Position Held	Reason for Terminating Connection
/1935	/1938	C. A. Harris & Son Ardenvoir, Washington	Lumbering	Mill employee	Other employment
2/1939	3/1940	Montgomery-Ward & Co. Wenatchee, Washington	Business retailing	Salesman	Promotion
3/1940	3/1942	Montgomery-Ward & Co. LaGrande, Oregon	Business retailing	Department head	To enter defense work
6/1942	4/1943	Seattle-Tacoma Shipbuilding Corporation Seattle, Washington	Navy ship construction	Welder	Other employment
4/1943	2/1945	Todd Shipyards, Inc. Seattle, Washington	Ship repair	Welder	Became self-employed
4/1945	4/1954	Self-employed Wenatchee, Washington	Orchard ownership	Owner & Manager	Sold orchard
4/1954	Present	Orondo Orchards, Inc. P.O. Box 1706 Wenatchee, Wn. 98801	Orchard ownership	Owner & Manager	Not terminated
5/1955	5/1957	Columbia River Orchards, Inc., P.O. Box 1706 Wenatchee, Washington	Orchard ownership	General Manager	Sold stock interest
3/1965	Present	Highland Orchards, Inc. P.O. Box 1706 Wenatchee, Washington 98801	Orchard ownership	General Manager	Not terminated

James A. Trabucco

10 (a) Business Organizations:

Name and Address	Type of Business	Date connection was established	Position held	Time	Compensation
Orondo Orchards, Inc. P.O. Box 1706 Wenatchee, Washington 98801	Orchard ownership	May, 1954	President, general manager & one-half owner	Substantially 50%	*
* Compensation as general manager and director, approximately					$15,000.00 annually
One-half of earnings distributed, approx.					20,000.00 annually
Highland Orchards, Inc. P.O. Box 1706 Wenatchee, Washington 98801	Orchard ownership	May, 1965	President, general manager & one-half owner	Substantially 50%	*
* Compensation as general manager and director, approximately					$15,000.00 annually
One-half of earnings of corporation, approximately					60,000.00 annually
Washington-Oregon Canning Pear Association, Holtzinger Bldg. Yakima, Washington	Price negotiation for members	1954	Director	Meetings on call, approx. bi-monthly	Expense

11 (a) Transactions with Brokerage Houses:

Walston & Co.	Seattle, Washington
Harris Upham & Co.	Seattle, Washington
Foster & Marshall	Seattle, Washington
E. F. Hutton & Co.	New York, N.Y.
Reynolds & Co.	New York, N.Y.
Blair & Co.	New York, N.Y.

[illegible] No

17 (a) Have you ever been expelled, suspended or otherwise disciplined by the Securities

am at present a proprietor, partner, director, officer, controlling stockholder, employee, or member of the following business organizations: (Give full details including address, type of business, date connection was established, positions held, amount of time devoted thereto and compensation received.)

SEE ATTACHED

(b) I have at present a financial interest (through direct or indirect stock or bond ownership, through outstanding loans, or otherwise) in the following companies engaged in a securities or financial or kindred business: (Give full details)

NONE

(c) I was formerly a proprietor, partner, director, officer, employee, or member of the following business organizations: (Give dates of connection, type of business, address and position held.)

Columbia River Orchards, Inc., P.O. Box 1706, Wenatchee, Washington May, 1955-May, 1957; orchard ownership; position, general manager and director

11. (a) I have, or have had during the past ten years, transactions with the following brokerage houses, either in my own name or in another style: (Give addresses. State style used for transactions not conducted in own name.)

SEE ATTACHED

(b) I have, or have had during the past ten years, accounts or other dealings (including loans granted or denied) with the following banks or other financial organizations, either in my own name or in another style: (Give addresses. State style used for accounts or loans not carried in own name.)

Seattle-First National Bank, Wenatchee Valley Branch, Wenatchee, Wn.
National Bank of Commerce, Columbia Valley Branch, Wenatchee, Wn.
Wenatchee Federal Savings and Loan Association, Wenatchee, Wn.

ANSWER "YES" OR "NO" TO QUESTIONS 12 THROUGH 21.

12. Have you ever used or been known by any name or style other than as shown in Statements I and II above? — No

13. (a) Have you ever been refused a bond by a surety company? — No

(b) Has any surety company paid out any funds on your coverage or cancelled your coverage? — No

14. Have your services ever been terminated by any employer? — No

15. In your previous business connections or employment in any capacity, has any transaction under your attention ever been the subject of a legal proceeding or a written complaint? — No

16. (a) Have you ever been a member, or associated as a principal with a member, of any securities or commodity exchange? — No

(b) Have you ever been a member, or associated as a principal with a member, of the National Association of Securities Dealers, Inc., or any other association of security or commodity brokers, dealers, investment bankers or investment advisors? — No

(c) Has any application for your approval by such an exchange or association, as a member or otherwise, ever been denied or withdrawn? — No

(d) Have you ever been associated (as a principal, employee or otherwise) with any organization which, or a principal of which, to your knowledge was refused membership or withdrew an application for membership in such an exchange or association? — No

17. (a) Have you ever been expelled, suspended or otherwise disciplined by the Securities and Exchange Commission or have your activities ever been the subject of an investigation by the Commission? — No

(b) Have you ever been expelled, suspended, fined, censured or otherwise disciplined

association? — No

17. (a) Have you ever been expelled, suspended or otherwise disciplined by the Securities and Exchange Commission or have your activities ever been the subject of an investigation by the Commission? — No

(b) Have you ever been expelled, suspended, fined, censured or otherwise disciplined by a securities exchange, commodity exchange, the National Association of Securities Dealers, Inc., or any other association of security or commodity brokers, dealers, investment bankers or investment advisors? — No

(c) Have your activities ever been the subject of an investigation by such an exchange or association, or by or on behalf of any State securities commission? — No

(d) Have you ever been associated (as a principal, employee or otherwise) with any organization which, or a principal of which, to your knowledge was expelled, suspended or otherwise disciplined by such an exchange or association or by the Securities and Exchange Commission? — No

18. (a) Have you ever been denied a license, franchise, permit, certificate or registration required to engage in the securities, commodities, or any other business or profession? — No

(b) Has any such license, franchise, permit, certificate or registration which you have held ever been suspended or revoked? — No

(c) Have you ever been prohibited, temporarily or otherwise, from engaging in the securities, commodities, or any other business or profession, or from dealing in any particular security or commodity? — No

(d) Have you ever been associated with any organization which, or a principal of which, to your knowledge has been prohibited from engaging in any business or profession or from dealing in any particular security or commodity, or whose license, franchise, permit, certificate or registration required to engage in any business or profession has been denied, suspended or revoked? — No

19. (a) Have you ever been arrested for, or formally charged with, the violation of any criminal law (other than minor traffic violations) or have you ever been accused before a court-martial? — No

(b) Are you now or have you ever been involved as a party in any other proceeding before a court, an arbitration tribunal, an administrative agency, or other regulatory body? — Yes See below

20. Have any judgments, liens, attachments or other encumbrances ever been taken or filed against you? — No

21. Have you, or any organization with which you have been associated, ever failed in business, made a compromise with or an assignment for the benefit of creditors, taken advantage of any Exemption Law, or been a party to any voluntary or involuntary bankruptcy or insolvency proceeding? — No

IF YOUR ANSWER TO ANY OF QUESTIONS 12-21 IS "YES", PLEASE GIVE FULL DETAILS (Attach separate signed sheet if necessary):

Question No.	
19 (b)	Plaintiff in pending action against Reynolds & Co. and Ralph E. Carpenter, Jr., New York, for damages in connection with stock transactions in 1963, U. S. District Court, Southern Division, New York, Cause No. 65 Civil, 945

(OVER)

(Copy Receipt) (Clerk's Date Stamp)

Superior Court of Washington for CHELAN County

I, MURIEL E. ROATH, County Clerk and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, which Court is a Court of record with a Clerk and a Seal, having common law jurisdiction; do hereby certify that David L. Ramsey whose name is subscribed to the certificate attached to and made a part of the annexed instrument, was on the 15 day of April, 19 69, the date on which he signed the same, a duly ~~ARRelated~~ and qualified notary public in and for said County and State and authorized by law to administer oaths and take acknowledgments therein. That I am acquainted with his signature and hand writing and verily believe that the signature subscribed to said certificate is his signature. And that said certificate is made and executed according to the laws of the State of Washington.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 15 day of April, 19 69.

MURIEL E. ROATH
Clerk.

By Margaret Smith
Deputy.

This blank is guaranteed against unlawful alteration, which guarantee is insured Washington Legal Blank Co. (Certificate of Official Character)

Form No. 1414-P

Dated April 15, 1969

Seamon & McDonald

237

Question No.	

22. What will be your specific activities (if any) with the member organization?

None

23. Other than as shown in Statement 10, do you intend to devote your time exclusively to the business of the member organization? (Answer "Yes" or "No".) No

24. For purposes of determining examination requirements in connection with joint New York Stock Exchange -National Association of Securities Dealers, Inc. examinations, please indicate whether or not you have ever been registered with the National Association of Securities Dealers, Inc.? (Answer "Yes" or "No".)

No

I RECOGNIZE THAT THE STATEMENTS HEREIN (AND IN EVERY SUPPLEMENTARY SHEET ATTACHED HERETO) WILL BE VERIFIED BY INVESTIGATION, AND HEREBY DECLARE THAT THEY ARE TRUE, COMPLETE AND ACCURATE.

In consideration of the approval by the Board of Governors of my firm's application for me to become an allied member of the New York Stock Exchange and a general partner or holder of voting stock, I hereby agree that unless the Exchange waives its required basic allied member examination, I will, within three months following (i) one year after becoming an allied member without having passed such basic examination or (ii) my failure to pass such basic examination after not more than three attempts, whichever occurs first, retire as a general partner of, or dispose of all of my voting stock in my member organization.

I further state that I have read the Constitution and Rules of the Board of Governors of the New York Stock Exchange and I hereby make application to become an allied member of the Exchange. I hereby pledge myself to abide by the Constitution and Rules of the Board of Governors of the New York Stock Exchange as the same have been or shall be from time to time amended, and by all rules and regulations adopted pursuant to the Constitution, this pledge to become effective in the event of, and forthwith upon, the approval of this application.

*The language enclosed in asterisks applies only to proposed allied members.

Date April 15, 1969

Jessica A. [illegible]
(Signature of Applicant)

State of Washington }
County of Chelan } ss.:

On the 15th day of April in the year 1969

before me personally came VERNON A. STOCKWELL to me known, and known to me to be the person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

[signature]
Notary Public in and for the State of Washington, residing at Wenatchee

NOTE: If executed outside of New York State, attach Certificate of County Clerk or other appropriate official as to the authority of the Notary Public or other official taking the acknowledgment.

AD-28

CORPORATION

File 2 Copies

NEW YORK STOCK EXCHANGE

Financial Supplement to Application of

..VERNON A.. STOCKWELL Dated ....May 12, 1969....,

Concerning the Member Corporation,

.....Blair & Co Inc.....

1. My net worth (including equities in real estate, securities and other property) is in excess of $ 1,000,000 or

STRIKE OUT INAPPLICABLE WORDS IN BRACKETS. A STATEMENT ANSWERED "WILL NOT" REQUIRES NO FURTHER ANSWER.

2. I [~~will~~] [will not] be a director of the corporation.
3. I [~~will~~] [will not] be an officer of the corporation. (State office to be held, if any): _____
4. I [will] [~~will not~~] own 372 shares of voting stock representing 0.166% of the voting stock of the corporation for which I will pay $15.37 representing [par] [book] [agreed] value.
5. I [will] [~~will not~~] own 43 shares of non-voting stock representing 0.12% of the non-voting stock of the corporation for which I will pay $4300.- representing [par] [book] [agreed] value.
6. I [~~will~~] [will not] own [_____ debentures bearing _____% interest for which I will pay $_____] [_____ participating debentures for which I will pay $_____].
7. I [will] [~~will not~~] make a subordinated loan to the corporation of $ 50 000 in [~~cash~~] [market value of securities], for which I will receive interest at the rate of 3 %. The subordinated loan will expire _____.
8. I [~~will~~] [will not] subordinate my claim to the equity in my account with the corporation, captioned _____, which has a [debit] [credit] balance of $ _____ and long securities with a market value of $ _____. As compensation therefor, I will receive interest at the rate of _____%. The subordination of my claim will expire _____.
9. (a) The corporation [~~will~~] [will not] pay me a salary of $_____ per _____.

   (b) The corporation [~~will~~] [will not] guarantee me compensation of $_____ a year, in salary and/or participation in corporate profits.
10. (a) I have not borrowed, nor will I borrow, and no one other than myself has any interest in, any of the cash or securities used to purchase the corporation's stock or debentures, loaned to the corporation, or included in my subordinated account with the corporation (as the case may be) [EXCEPT AS FOLLOWS]:

    No equities

239

(b) I have not given, nor will I give without the prior approval of the Exchange, any note, obligation, acknowledgment, assignment or other agreement with respect to the stock or debentures to be purchased, the property to be loaned, or the property included in my subordinated account (as the case may be); nor with respect to any interest or compensation which I will receive from the corporation [EXCEPT AS FOLLOWS]:

No exceptions

(c) (FOR PROPOSED ALLIED MEMBERS ONLY) I have no other loans or borrowings reportable under Rule 420 of the Board of Governors [EXCEPT AS FOLLOWS]:

(The space above may be used for the fuller explanation of any Statement in this Supplement.)

Vanessa A Stoebuck
(Signature of Applicant)

I certify that the answers to Statements 2 through 9 above are correct.

Benjamin H Clark
(Signature of Director of Member Corporation)

240

Exhibit B

(Rules and Policies Administered by the Department of Member Firms.)

¶ 2313 Submission of Partnership Articles—Submission of Corporate Documents

Rule 313. (a) All partnership articles and all amendments thereto shall be submitted and be acceptable to the Exchange prior to becoming effective.

(b) The charter or certificate of incorporation and all amendments thereto, the by-laws and all amendments thereto, forms of stock certificates and any and all agreements or other documents and amendments thereto between a member corporation and any of its stockholders or between any of the stockholders of a member corporation other than agreements relating to ordinary securities and commodities transactions shall be submitted to and be acceptable to the Exchange prior to becoming effective.

• • • *Supplementary Materials*

Information Regarding Partnership Articles

.10 **Submission of partnership agreements.**—Drafts of partnership articles or of changes in partnership articles proposed to be entered into in connection with the formation of a firm or the admission of a new partner should be submitted to the Department of Member Firms at least one week in advance of the date on which the application will be acted upon by the Board of Governors. Drafts of other changes to be made in partnership articles should be submitted in advance of their effective date.

The Exchange requires that a signed, photostatic or conformed copy of all partnership articles, including any amendments and supplements thereto, as executed, be filed with the Exchange.

(*See* ¶ 2312.10-2312.24 *for procedure to be followed regarding approval of partners and partnerships.*)

.12 **Partner's equities; continuing interest of deceased partner.**—For suggested provisions of partnership articles, see ¶ 2325.17, 2325.18.

.14 **A-B-C agreements.**—For suggested provisions of partnership articles, see ¶ 2301.34.

.16 **Use and proceeds clause.**—For required agreement to be included in Partnership Articles, see ¶ 2314.20.

.18 **Sole board member provision.**—For information concerning sole board member provisions, see Sections 13(a) and 13(b) of Article IX of the Constitution [¶ 1413]. See, also, ¶ 2314.23.

Information Regarding Member Corporations

.20 **Submission by proposed member corporations of certificate of incorporation, by-laws and other corporate documents.**—Existing corporations shall promptly submit certified copies (to the extent possible) of the foregoing documents and corporations to be formed shall submit drafts thereof, prior to the time they become effective, to the Department of Member Firms. Upon

the formation of a corporation or when an amendment to any of the foregoing documents becomes effective, a duly certified copy of the certificate of incorporation and by-laws shall be filed with the Department of Member Firms and signed, photostatic or conformed copies of the other documents shall be so filed.

(*See* ¶ 2312.10-2312.24 *for procedure to be followed regarding approval of corporations.*)

There shall also be submitted an opinion of counsel in form and substance satisfactory to the Exchange stating, among other things, that the corporation is duly organized and existing and that its stock is validly issued and outstanding and that the restrictions required by the Exchange on the transfer and issuance of its stock have been made legally effective.

(*See 22, below, for restrictions on corporations not incorporated under laws of the State of New York.*)

.21 **Provisions concerning disposition of stock.**—Each certificate of incorporation of a member corporation shall contain provisions that the corporation or its stockholders, or both, shall have a prior right to purchase, at a price at which it is proposed to be sold or at a stipulated or determinable price, the stock of any stockholder who:

(1) Proposes to sell or dispose of any of his stock, or dies, or

(2) has violated any agreement made by him with his member corporation or with the Exchange, or has been suspended or expelled from the Exchange.

Where the state of incorporation is unwilling to accept a certificate of incorporation, which contains a purchase option effective upon a stockholder's having violated any agreement made by him with the member corporation or with the Exchange, the Exchange will accept in lieu thereof a separate agreement signed by each stockholder in the member corporation.

Each stock certificate of a member corporation shall carry on its face a statement of such provisions or a full summary thereof.

.22 **Restrictions on corporations.**—Corporations not organized under the laws of the State of New York shall effectively subject themselves to the following restrictions and the opinion of counsel submitted to the Exchange at the time the corporation applies for approval as a member corporation shall set forth the extent to which the following restrictions have been made legally effective:

No dividend shall be declared or paid which shall impair the capital of the corporation nor shall any distribution of assets be made to any stockholder unless the value of the assets of the corporation remaining after such payment or distribution is at least equal to the aggregate of its debts and liabilities, including capital.

.23 **List of stockholders.**—In the case of existing corporations making application to become member corporations, a certified list of stockholders, giving the name, address and the number of shares of each class of stock held, shall be submitted to the Department of Member Firms, and in the case of corporations proposed to be organized similar information shall be given with

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respect to the persons who will be the stockholders when the corporation is organized.

(*See* ¶ 2312.10-2312.24 *for procedure to be followed regarding approval of stockholders.*)

.24 Agreement with the Exchange.—Every stockholder of a member corporation must agree with the Exchange that, so long as the corporation continues as a member corporation, he will not, without the prior written approval of the Exchange, transfer, sell, assign, pledge or otherwise create, or permit to be created, any lien, charge or encumbrance upon his stock in the corporation. Each stock certificate of a member corporation shall carry on its face a statement of such agreement or a full summary thereof.

The member corporation and all its stockholders must agree with the Exchange that if any of the voting stock in such corporation should at any time be acquired, held or owned by a person other than a member or allied member in good standing, or any of its non-voting stock should at any time be held by a person not approved by the Exchange, excepting in either case the estate of a deceased stockholder for such period as may be allowed by the Exchange, or if any stockholder should violate his said agreement, the corporation may be deprived by the Exchange of all the privileges of a member corporation.

¶ 2314 Fixed Interest in Business of Partner

Rule 314. Every member and allied member in a member organization must have a fixed interest in its entire business.

* * * *Supplementary Materials*

.10 Profits of partnership.—If a limited partner is to receive a share in the profits of the partnership, it must be a percentage of the profits of the *entire* partnership.

.11 Interest of members and allied members.—

(1) Percentage interests of general partners must be fixed in advance.

(2) A partner's drawings against his interest in profits may be at the discretion of the firm.

(3) As between the partners or stockholders, any member or allied member, other than a sole Exchange member whose membership is not subject to an a-b-c agreement, may be guaranteed against loss by his other partners or stockholders, except that any such guarantee may not apply to the minimum initial investment in member corporations required by (3) below.

(*See* ¶ 2301.34 *for information concerning a-b-c agreements.*)

(4) Salaries or the terms of compensation of members and allied members must be fixed in advance. Compensation to an allied member based on commissions and profits earned by the member organization on accounts accredited to such allied member may include recognition on the regular basis for commissions and profits earned on accounts in which he has a personal financial interest, but only to the extent that commissions and profits on such accounts in which he has a personal financial interest shall not exceed 10% of the total commissions and profits on all other accounts accredited to such allied member computed on an annual basis.

(5) Members, except those whose interest in a membership exceeds $5,000, and allied members entering a member corporation must initially

Exhibit C

NEW YORK STOCK EXCHANGE, INC.

Department of Member Firms

MEMORANDUM

November 9, 1971

TO: Advisory Committee

FROM: Department of Member Firms

SUBJECT: Offerings of Securities by Member Organizations

PROBLEM

Should the Exchange require each member organization to furnish an opinion of counsel with each security offering for the purpose of raising capital under Rule 325?

BACKGROUND AND DISCUSSION

Public offerings of securities by issuers are, in general, subject to the registration requirements of the Securities Act of 1933 unless some specific exemption is provided by that Act. Likewise, the so-called "blue sky" laws of many states require the registration of securities prior to the offering and sale of such securities within that state. In some recent cases the purchasers of stock issued by former member corporations have asserted that the offer and sale of stock to them was in violation of applicable registration requirements of state blue sky laws and that, consequently, they may rescind the purchase and recover back the purchase price. The same potential claim would exist in an appropriate case under the Federal Securities Act of 1933.

In addition, the SEC has recently made clear that subordinated accounts and other subordinated borrowings may themselves be deemed to be securities within the meaning of the Securities Act of 1933 and that consequently they may be properly subject to the registration requirements of that Act before they can be offered and sold.

It has become increasingly apparent to the Exchange in recent years that this situation poses a serious problem under Rule 325 of the Exchange, because it opens up the possibility that "net capital" obtained through issuance of securities in violation of an applicable federal or state securities law may, in fact, be recoverable by investors who exercise their right of rescission. Obviously, the proceeds of sale of securities which are subject to recovery by the purchasers of the securities should not be deemed to be good net capital under Rule 325. In fact, the Exchange has only recently completed amendments to its net capital rule which were designed in large part to enhance the permanence of member organization capital.

It would be appropriate for the Exchange to complement its recent amendments of capital rules by requring each member organization to furnish to the Exchange an opinion of counsel as to whether any offer to sell securities for the purpose of raising capital under Rule 325 needs to be registered under the 1933 Act of any "Blue Sky" laws of any state. Such a requirement would be helpful to member organizations raising capital as well as an important self-regulatory measure for the Exchange.

The requirement could be effected by the addition of new language to Rule 313 under a new Paragraph (d) (Exhibit A) with the present Paragraph (d) and subsequent paragraphs renumbered.

RECOMMENDATION

That the Advisory Committee recommend to the Board of Governors approval in principle, for discussion with the SEC staff and resubmission to a later meeting for final approval, of an amendment to Rule 313 to require member organizations to furnish an opinion of counsel with each security offering for the purpose of raising capital under Rule 325.

EXHIBIT A

RULE 313(d)

Whenever a member organization shall offer or sell any security, as defined under the Securities Act of 1933, as amended, or the General Rules and Regulations thereunder (the 1933 Act), or under the "blue sky" law or the regulations thereunder of any state in which it is proposed that the security be offered, which security is issued by the member organization for the purpose of raising net capital under Rule 325 of the Board of Governors of the Exchange, the member organization must furnish the Exchange with an opinion of counsel in form and substance satisfactory to the Exchange as to whether or not the securities being offered or sold need be registered under the 1933 Act and a survey of the type customarily prepared in respect of the underwriting of securities, but not an opinion, as to what action, if any, need be taken with respect to such offer or sale under any applicable state "blue sky" law. If, in counsel's opinion, the securities need not be registered under the 1933 Act, his opinion shall state the exemption from the registration requirements of the 1933 Act upon which he is relying and the basis for such reliance. If the securities are required to be registered under the 1933 Act counsel's opinion shall include, in addition to such other statements as the Exchange in any particular case may require,

a statement substantially to the effect that at the time the registration statement became effective, the registration statement and the prospectus (other than the financial statements contained therein) complied as to form in all material respects with the requirements of the 1933 Act (and with the Trust Indenture Act of 1939, as amended, if applicable) and nothing has come to counsel's attention that would lead counsel to believe that the registration statement at the time it became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the prospectus at the time the registration statement became effective or at the time of sale of the security contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Prior to consummation of the sale of the security, counsel shall furnish a statement to the Exchange as to the action taken in order to comply with the state "blue sky" law of any state in which the security is offered or sold.

Without limiting the generality of the foregoing, counsel, among other things, is expected to give appropriate consideration to (a) any other transactions pursuant to which the member organization has raised net capital in the past, or expects to do so in the future, (b) the disclosure of material information regarding the member organization to offerees of the security, and (c) the need for representation by the purchaser of the securities as to his intention to hold the securities for investment.

(Renumber following paragraphs)

NEW YORK STOCK EXCHANGE, INC.

MEMORANDUM

November 18, 1971

TO: Board of Governors

FROM: Advisory Committee

SUBJECT: OFFERINGS OF SECURITIES BY MEMBER ORGANIZATIONS

The Advisory Committee has considered the staff memorandum dated November 9, 1971 and recommends to the Board of Governors approval in principle - for discussion with the SEC staff and re-submission at a future meeting of the Board - of an amendment to Rule 313 to require member organizations to furnish an opinion of counsel with each security offering for the purpose of raising capital under Rule 325.

NEW YORK STOCK EXCHANGE, INC.

MEMORANDUM

December 16, 1971

TO: Board of Governors

FROM: Department of Member Firms

SUBJECT: OFFERINGS OF SECURITIES BY MEMBER ORGANIZATIONS

On November 18, 1971 the Board of Governors approved in principle - for discussion with the SEC staff - an amendment to Rule 313 to require member organizations to furnish an opinion of counsel with each security offering for the purpose of raising capital under Rule 325. The proposed amendment was submitted to the SEC and they have made no comment. Accordingly, it would be in order for the Board to give final approval to the amendment.

Exhibit D

February 27, 1968

Schwabacher & Co.
100 Montgomery Street
San Francisco, California 94104

Attention: Mr. Albert E. Schwabacher

Gentlemen:

Recent reports of the continuing differences in your records which appear to be of such magnitude as to exceed your excess net capital is of great concern to us. Because of it we believe you have not been able to gain control of your records and consequently of supervision of your registered representatives and customer accounts, particularly cash accounts.

We were willing to delay placing restrictions on your business when it appeared that differences were being eliminated gradually. Now that it is known the total size of short security differences far exceeds the amount shown in your weekly reports over the past many weeks, we feel that your firm must take prompt steps to secure extra help to correct your weaknesses and to reduce your volume of business until record keeping is improved. Your independent public accountants should be called upon to help locate existing differences and every available person on your staff should give his full time to clearing up the problem. Methods of reducing business might include discontinuing advertising and promoting, freezing the opening of new accounts, ceasing to trade for firm account, not participating in underwritings, and if necessary selling offices, terminating registered representatives, introducing part of your accounts on a disclosed basis to another member organization, etc.

I would appreciate your completing arrangements by telephone with Mr. W. E. Jones for a personal meeting at the Exchange very soon to discuss steps which you are taking to improve this situation. Thought should be given to increasing your firm's net capital to a point where it exceeds NYSE minimum requirements by an amount equal to at least the total short money differences and short security differences marked to current market.

Meantime, the Exchange will not approve any new registered representatives for your firm and you are restricted from making any new commitments for underwritings or expansion of your business of any kind.

Very truly yours,
/s/ ROBERT M. BISHOP

Robert M. Bishop
Vice President

WEJ/jmd

March 11, 1968

Schwabacher & Co.
100 Montgomery Street
San Francisco, Calif. 94104

PIC EXHIBIT 106
WITNESS BISHOP
REPORTER APM
DATE 1-9-75

Attention: Mr. Albert E. Schwabacher, Jr.

Gentlemen:

During our meeting last week, we agreed that it is essential for your firm to keep its business below approximately 1500-1700 transactions per day until (a) your firm is able to maintain all of your required records in a current and accurate manner, and (b) you are able to resolve most of the errors and differences which have developed in your records of past business. You are preparing a specific plan for so limiting your business which would be put in effect if your average volume for a week exceeds that figure. In the event that you are not able to make substantial progress, furthermore, the 1700 maximum figure would be lowered.

If this objective is to be met, it seems to us that all of your partners must be informed of the current situation and of your agreement with the Exchange so that each partner in his own area may effectively cooperate in achieving it.

We are also expecting a written description of steps your firm has taken and will take to improve its operations capacity.

Sincerely yours,

/s/ ROBERT M. BISHOP
Robert M. Bishop
Vice President

(WEJones:jmd)
RMBishop:jka

3/14
3/11
3/15

257

June 27, 1968

PLS EXHIBIT 116
WITNESS BISHOP
REPORTER [illegible]
DATE 1-7-75

Schwabacher & Co.
100 Montgomery Street
San Francisco, California 94104

Attention: Mr. Richard W. Muir

Gentlemen:

We have completed our review of your most recent responses as of May 31, 1963, to the special operations questionnaire and Form MF-6 dealing with fails and are disappointed that greater improvement was not evidenced. The excess of your fails to deliver over fails to receive and a large portion of them over 29 days is alarming. Without urging you to do so, we feel that you should have taken steps that would lead to a reduction in your firm's over-the-counter transactions.

Enclosed you will find a memorandum of steps taken by other member organizations to restrain business until their operational difficulties were eliminated or at least greatly reduced. Your average daily trades rose well above 1700, and we will expect that unless they are brought down to the 1700 level you will advise us promptly of the added steps taken to curtail business and restrict it to that number of trades. If you are unable to do so, then our only alternative will be to prohibit your firm's doing any underwriting or trading in securities for its own account or as principal for others.

In a recent conversation with W. E. Jones it was mentioned that your radio advertising is limited to a "salute to" an industry. We feel that using your name in conjunction with such an introduction is promotional and should be discontinued. To retain your spot we suggest you might carry the time for a charity of your choice without use of your firm's name.

Very truly yours,

/s/ ROBERT M. BISHOP

Robert M. Bishop
Vice President

Enclosure

WEJones/jmd

SOG
DIF

July 23, 1975

PIG EXHIBIT 119
WITNESS Bishop
REPORTER AC
DATE 7-7-75

Mr. Albert E. Sonnabend
Sonnabend & Co.
100 Montgomery Street
San Francisco, California 94104

Dear Mr. Sonnabend:

We are not encouraged by your July 16th Operations Questionnaire. The restrictions you have agreed upon with the SEC should be most beneficial, but are not sufficient.

Since your report of this continues to have unfavorable ratios, you are hereby directed to cease accepting any sell orders for over-the-counter securities unless you have the certificate in your possession in good delivery form, or a bank or other broker certifies to you that they have the certificate on hand in good delivery form and will deliver by settlement date, or you have arranged to borrow such securities to make delivery, or you purchase in the security for a customer but are failing to receive it and the position is a transient item in the customer's account. As to any of restrictions in which you make markets, you must similarly have an ability to deliver before making any sales.

Very truly yours,

/s/ ROBERT M. BISHOP

Albert M. Bishop
Vice President

mtu

259

Exhibit E.

Administrative Proceeding
File No. 3-1625

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

JUL 11 1969

In the Matter of	ORDER FOR PRIVATE PROCEEDINGS PURSUANT TO SECTIONS 15(b), 15A AND 19(a)(3) OF THE SECURITIES EXCHANGE ACT OF 1934.
SCHWABACHER & CO.	
File No. 8-3913	
ALBERT E. SCHWABACHER, JR.	

I

The Commission's public official files disclose that:

A. Schwabacher & Co. (registrant), a partnership with its principal place of business at 100 Montgomery Street, San Francisco, California, has been registered as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) since March 31, 1936 and is still so registered.

B. Albert E. Schwabacher, Jr. is the senior general partner of registrant.

C. Registrant is a member of the National Association of Securities Dealers, Inc., a national securities association registered pursuant to Section 15A of the Exchange Act.

D. At all times mentioned herein registrant has been a member of the New York Stock Exchange, American Stock Exchange, Pacific Coast Stock Exchange, Midwest Stock Exchange, Chicago Board of Trade, Salt Lake Stock Exchange, and National Stock Exchange, all national securities exchanges registered pursuant to Section 6(a) of the Exchange Act.

E. Registrant is a member of the Honolulu Stock Exchange, an exchange exempted from registration under Section 5 of the Exchange Act.

II

As a result of an investigation, the Division of Trading and Markets has obtained information which tends to show and which alleges that:

A. During the period from about January 1, 1966, to the date hereof, registrant, wilfully aided and abetted by Alfred E. Schwabacher, Jr., wilfully violated Section 17(a) of the Exchange Act and Rule 17a-3

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thereunder in that registrant failed to make or keep current the following books and records relating to its business:

(1) Blotters (or other records of original entry) containing an itemized daily record of purchases and sales of securities, receipts and deliveries of securities (including certificate numbers), receipts and disbursements of cash and other debits and credits.

(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of registrant and partners thereof, all purchases, sales, receipts, and deliveries of securities and commodities for such account and other debits and credits to such account.

(4) Ledgers (or other records) reflecting the following:

(A) securities in transfer;

(B) dividends and interest received;

(C) securities borrowed and securities loaned;

(D) monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral);

(E) securities failed to receive and failed to deliver.

(5) Securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by registrant for its account or for the account of its customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.

(6) Records in respect of each cash and margin account with registrant containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner.

B. Registrant, wilfully aided and abetted by Alfred E. Schwabacher, Jr., wilfully violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder in that (1) registrant failed to file with the Commission a report of financial condition for the year 1966 within the time required by Rule 17a-5(a) as extended under Rule 17a-5(d); and (2) such report of financial condition when filed on March 3, 1967, was not duly certified in accordance with Rule 17a-5(g).

C. Registrant, wilfully aided and abetted by Alfred E. Schwabacher, Jr., wilfully violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder in that (1) registrant failed to file with the Commission a report of financial condition for the year 1967 within the time required by Rule 17a-5(a); and (2) such report of financial condition when filed on March 19, 1968, was not duly certified in accordance with Rule 17a-5(g).

D. During the period from about January 1, 1966 to the date hereof, registrant, wilfully aided and abetted by Alfred E. Schwabacher, Jr., wilfully violated Section 8(c) of the Exchange Act and Rule 8c-1(a)(2) thereunder by, directly and indirectly, hypothecating, arranging for and permitting the continued hypothecation of securities carried for the accounts of customers under circumstances permitting such securities to be commingled with securities carried for the accounts of persons other than bona fide customers under loans for loans made to registrant.

III

In view of the allegations made by the Division of Trading and Markets, the Commission deems it necessary that private proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and in connection therewith to afford registrant and respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest pursuant to Sections 15(b), 15A and 19(a) of the Exchange Act; and

C. Whether, pending final determination of the issues set forth in paragraphs A and B above, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

IV

IT IS HEREBY ORDERED that a private hearing for the purpose of taking evidence on the questions set forth in Section III hereof be held at such time and place as the Commission may hereafter designate pursuant to Rule 6(b) of the Commission's Rules of Practice. The hearing shall first consider the question raised in paragraph C of Section III hereof and upon completion of that phase of the proceeding the hearing will be adjourned and post hearing procedures on that question as specified in Rule 19 of the Commission's Rules of Practice will be applicable. After final determination of the question of suspension the hearing shall be reconvened by the hearing examiner at such time as the hearing examiner may designate, for the purpose of

taking additional evidence on the questions remaining under paragraphs A and B of Section III. The record adduced with respect to the question raised under paragraph C of Section III shall be deemed a part of the record at the reconvened hearing with respect to consideration of the remaining questions raised under paragraphs A and B of Section III. Upon the completion of the taking of all the evidence in this matter, the post hearing procedures will be conducted pursuant to Rule 16(b) of the Commission's Rules of Practice.

If any party fails to appear at any hearing after being duly notified, such party shall be deemed in default and the proceeding may be determined against such party upon consideration of the order for proceedings, the allegations of which may be deemed to be true as provided by Rules 6(e) and 7(e) of the Commission's Rules of Practice.

This order shall be served upon the registrant, Schwabacher & Company and Albert E. Schwabacher, Jr. personally or by certified mail forthwith.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule-making" within the meaning of Section 4(c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of that Section delaying the effective date of any final Commission action.

By the Commission.

Orval L. DuBois

Orval L. DuBois
Secretary

SERVICE LIST

Rule 23 of the Commission's Rules of Practice provides that all amendments to moving papers, all answers, all motions or applications made in the course of a proceeding (unless made orally during a hearing), all proposed findings and conclusions, all petitions for review of any initial decision, and all briefs shall be filed with the Commission and shall be served upon all other parties to the proceeding including the interested division of the Commission.

The attached Order for Proceedings has been sent to the following parties:

Securities and Exchange Commission
Division of Trading and Markets
500 North Capitol Street, N. W.
Washington, D. C. 20549

Securities and Exchange Commission
San Francisco Regional Office
450 Golden Gate Avenue, Box 36042
San Francisco, California 94102

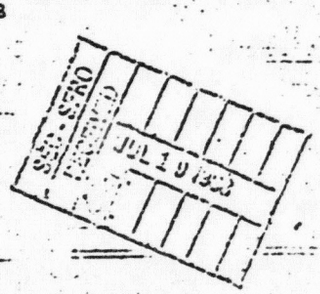
Schwabacher & Co.
100 Montgomery Street
San Francisco, California 94104

Albert E. Schwabacher, Jr.
100 Montgomery Street
San Francisco, California 94104

Exhibit F

Schwabacher & Co.

July 19, 1968



Regional Office
Securities and Exchange Commission
450 Golden Gate Avenue
San Francisco, California - 94102

Attention: Mr. Arthur E. Pennekamp,
Administrator

Gentlemen:

Confirming our advice to you in the course of our conference yesterday, we have instituted, or are instituting with all dispatch, the following steps:

1. All newspaper, radio and magazine advertising has been ordered stopped.

2. While existing commitments, of course, must be carried out, limitations have been imposed in connection therewith and future underwritings will be severely curtailed as follows:

(a) In carrying out existing commitments, our managers have been instructed to impose the minimum allocations outlined in the attached memorandum.

(b) There will be no originations by this firm.

(c) Our participations in new underwritings will be limited to historical accounts and one additional issue, namely, American Building Maintenance.

(d) We will engage in no competitive bidding for corporate obligations.

(e) We will not participate in selling groups, except for the limited purpose of soliciting bonds for certain institutional buyers.

(f) We will participate in no municipal underwritings except where we have retail offices (California, Hawaii, Utah, Idaho, Nevada).

3. We will eliminate one-third of the over-the-counter issues in which we make a market. The remaining issues relate to securities in which we were managers or co-managers of underwritings and we will substantially curtail our positions in these issues. In this connection, we understand that two have applied or are applying for listing.

4. We will accept no purchase orders on any stocks selling under $5 per share.

5. We will reduce by two-thirds our acceptance of new accounts and will develop a quota system for the allocation of the limited number of new accounts which may be accepted.

6. Transactions on the Salt Lake Stock Exchange will be limited to liquidation orders for a period of ninety days.

7. No withdrawals from capital accounts of partners will be permitted. We will also develop and report to you a program for severely limiting withdrawals from personal accounts of partners.

8. An additional $250,000 will be added to partnership capital by the close of business on Monday, July 22nd.

The above program will remain in effect during the next thirty days and of course, we will review with you, prior to the expiration of such period, the necessity for continuing or supplementing any of these items. We have instructed Mr. Moeller to contact Mr. Keegan of your office to develop an appropriate procedure for reporting progress on these and related steps during the interim period.

Yours very truly,

SCHWABACHER & CO.

By: Albert E. Schwabacher, Jr.
Senior Partner

AES:mlf

Exhibit G

269

October 24, 1968

Schwabacher & Co.
100 Montgomery Street
San Francisco, California 94104

Plfs EXHIBIT 128
WITNESS Bishop
REPORTER GGM
DATE 1-7-72

Attention: Mr. Albert E. Schwabacher, Jr.

Gentlemen:

Our review of your firm's responses to the special operations questionnaire, Form MF-6 (Fails) and your auditors' letter of October 21, 1968, concerning this year's "surprise" audit, wherein he states that it appears the comments dealing with material inadequacies will be substantially the same as those made at the time of last year's audit as of October 27, 1967, has resulted in a determination that your firm must take further steps to curtail its business.

You are instructed to reduce the volume of your business not later than one month from today by 10% and not later than one month thereafter by an additional 10%. Should the report written in connection with your August 30 audit indicate the need for a further reduction, we will make such determination at the time it is received. It is suggested that you promptly determine how these reductions will be accomplished. It could be by the sale of offices (see the attached memorandum), releasing registered representatives, or the introduction of accounts to other member organizations on a disclosed basis. As soon as you have made your determination, please let us know.

At the time of your answering special operations questionnaires in the future, we want your auditors to perform the procedures set forth in the attached review program and submit a report of their findings. If your auditors for any reason feel they cannot perform this request in connection with your October response, we will be glad to discuss with the auditors their starting the program with the November return.

Sincerely,

/s/ ROBERT M. BISHOP

Robert M. Bishop
Vice President

Attach.

WEJo..es/jmd

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MEMORANDUM

Plfs EXHIBIT 131
WITNESS BISHOP
REPORTER GIZZI
DATE 1-9-75

November 7, 1968

Al Schwabacher, Dick Muir and Ray Holvenstot of Schwabacher & Co. met with John Cunningham, Lee Arning, Robert Bishop, Lloyd McChesney and myself today for the principal purpose of obtaining relief from the directive in Mr. Bishop's letter of October 24, 1968.

During the course of the meeting we were informed that Schwabacher & Co.'s present input is being handled without building up differences. We were also told that although special effort is being made to correct differences which existed prior to the audit, it is estimated that it will take many months to locate substantially all of such differences. After a year undoubtedly the differences will be covered or liquidated, depending upon their nature.

Although we had determined that a further extension would not be granted covering answers to a financial questionnaire, because of advice to the effect that the auditors were not using this period for locating further differences but only the adjustment of differences previously located, it was decided that a further week should be given.

The firm was asked to work up and submit a work plan which would set forth a timetable for achievement in bringing its operations to a current basis. In addition, we requested that once the schedule has been prepared that we be given weekly progress reports. This was mentioned to be a very important step in order that it can be presented at the time of a private hearing before the SEC on November 25.

Schwabacher & Co. was told that we would want an audit on a surprise basis during the first six months of 1969 and that such audit might not eliminate the necessity for another surprise audit later in the year.

Insofar as the further restriction on the Schwabacher & Co. business is concerned, it was determined to defer the effective date of such new restriction until at least December 15. In the interim, we will have the opportunity to review the firm's special operations questionnaire for November, the work plan and weekly progress reports and also the review by the firm's accountants of the procedures which they have followed as set forth in a review program, a copy of which was directed to Schwabacher & Co. with our letter of October 24, 1968.

W. E. Jones

jmd

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November 7, 1968

Mr. A. E. Schwabacher, Jr.
Schwabacher & Co.
100 Montgomery Street at Sutter
San Francisco, California

PLF EXHIBIT 132
WITNESS BISHOP
REPORTER SRM
DATE 1-9-75

Dear Al:

In our letter to your firm dated October 24, 1968, a restriction was imposed calling for a reduction of 10% in the volume of your firm's business by November 24, 1968, and a further 10% by December 24, 1968.

During our meeting today with Richard Muir, Ray Holvenstot and you, we were told that the input covering present business of Schwabacher & Co. is under complete control so that security differences are not increasing. We also understood that a program will be devised to provide a timetable for achievement and weekly reports of progress in this connection.

As stated during our meeting, we have determined to defer at least until December 13, 1968, putting the above-mentioned further restrictions into effect. This will afford time for the submission of your firm's response to a regular financial questionnaire of August 30, 1968, and the related audit report of Hood & Strong, your answers to a special operations questionnaire at the end of November with your selected accountants review of such answers, and your timetable for accomplishing the elimination of recorded differences existing at the time of the audit and one or two weekly progress reports. On the basis of this information, we will re-evaluate your firm's operational condition and determine whether a reduction in business is really necessary.

It was also determined that we will expect Schwabacher & Co. to have an audit of its affairs during the first half of 1969 as of a date unknown to it in advance. It may or may not be necessary that your firm have another "surprise" audit during the latter part of 1969.

In response to your letter of November 5, 1968, concerning the return of answers to a regular financial questionnaire as of August 30, 1968, since the additional time needed to complete the response is not for the purpose of locating additional security differences, your request for a further extension until November 18, 1968, has been granted.

Sincerely,

/s/ ROBERT M. BISHOP

Robert M. Bishop
Vice President

WEJones/jmd

Exhibit H

HOOD AND STRONG
CERTIFIED PUBLIC ACCOUNTANTS

100 Bush Street, San Francisco, Calif. 94104
TELEPHONE 781-0703

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Pltfs EXHIBIT 136
WITNESS Fisher
REPORTER A.R.M.
DATE 1-7-75

SCHWABACHER & CO.
San Francisco, California

We have examined the Answers to the Financial Questionnaire of SCHWABACHER & CO. as of August 30, 1968. Our examination, except as noted in the following paragraph, was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we were able to apply in the circumstances, including the audit procedures prescribed by the New York Stock Exchange and the Securities and Exchange Commission. We also reviewed the accounting system, internal accounting control and procedures for safeguarding securities including tests thereof since the date of the prior examination.

As will be noted in the response to Part I, Question 13, Item (21), there remain unlocated the following cash and security position differences:

	MONEY BALANCES		SECURITY POSITION	
	Debit	Credit	Long	Short
Total	$3,209,142	$215,934	$7,743,619	$7,103,251

These differences are, to a considerable extent, the results of the unsatisfactory condition of the accounting records, material inadequacies in internal accounting controls and other considerations, all of which preclude the extension of auditing procedures to the extent required. In this connection it should also be noted that many correcting journal entries have been made by employees of the firm, as of August 30, 1968, which it has not been possible to take into consideration in the accompanying Answers. This situation is due to the following causes:

(1) Certain adjustments, after entry on the firm's records, could not be located or, if located, could not be accepted by us due to the lack of related evidential information.

(2) Adjusting entries were made too late for us to verify and process in time to meet the deadline for filing the accompanying Answers.

(3) Other correcting entries were made as of a date subsequent to August 30, 1968, which entries included corrections as of August 30, 1968, which we were unable to accept for audit purposes.

In addition, there remain unanswered a substantial number of replies from customers and others, including "fail" accounts, in response to our request for written confirmation of the accounts, which, until resolved, it will not be known if a loss exists in connection therewith or if the account has been properly classified as reported in the accompanying Answers.

Because of the materiality of the amounts of the unlocated cash and security position differences, the potential amounts of the other items also mentioned in the preceding paragraphs, the absence of information to permit proper classification and evaluation of these items and determine the resulting effect upon the financial position of the firm, it is our opinion that the Answers to the Financial Questionnaire do not present fairly the overall financial position of SCHWABACHER & CO. at August 30, 1968.

HOOD AND STRONG

November 16, 1968

Exhibit I

277

CF
WEF

MEMORANDUM

November 26, 1968

SUBJECT: Schwabacher & Co.

As a result of conversations with Albert E. Schwabacher and Stanley Sporkin (SEC) this morning, we have arrived at the following arrangement:

Schwabacher will add to their offer of settlement in the SEC proceedings their willingness to accept a censure by the SEC which will take into consideration disciplinary action by the Exchange, and the Exchange's disciplinary action will be announced in the SEC penalty announcement.

Schwabacher will agree to the NYSE's Constitutional limit of $10,000 per proceeding being exceeded in charges which will be brought for their capital violations, record keeping inadequacies and associated matters. Their agreement will consent to fines of up to $50,000 instead of the Constitutional limit of $10,000, with the disposition of that amount to the firm or individual partners to be decided by the Exchange.

I have also made it clear to Schwabacher that the Exchange will also retain its Constitutional power to censure, and suspend or expel, as well as the enlarged fining possibility.

Mr. Arning and Mr. Cunningham agreed that we would commit to the SEC to produce from these charges at least a $50,000 fine.

The purpose of these unusual procedures is to meet the condition of Blair & Co., Inc. for their lending Schwabacher $6 million.

We will be meeting with William M. Tendmann of Blair & Co., Inc. early this afternoon to get their concurrence.

Robert M. Bishop, Director
Department of Member Firms

278

Exhibit J

MEMORANDUM

Plfs EXHIBIT 139
WITNESS BISHOP
REPORTER GRM
DATE 1-7-75

November 26, 1968

RE: Schwabacher & Co.

Mr. William Lendman (Blair & Co., Inc.) raported in a meeting with Mr. Arning and me, the following details of their pending agreement with Schwabacher & Co.

1. His operations executives who have been at Schwabacher for a week report that their current operation is adequate and that Holvenstot is taking hold on resolution of old errors.

2. Moelter has been over his head. Our examiners have treated him charitably, not seeing the lack of effective supervision at the firm. Lendman as advisory to Schwabacher has ~~xxxxx~~ recommended that Moelter be terminated and this will be done this week, putting Holvenstot in full operations charge.

3. The Schwabacher general partners capital of $2.8 million will become stock and loans to Blair and an additional $17 million of related Schwabacher capital as well will be locked into Blair for five years. Limited partners capital of about 3/4 million will be let out in a shorter time, perhaps 2½ years.

4. Al Schwabacher will be on the Blair board, but will have no part in management. All other Schwabacher partners will become Blair allied members, except Heller, who will be a non-voting stockholder.

5. The firms will be merged, perhaps in January, with Blair taking over all Schwabacher liabilities. All Schwabacher errors will be placed in single account and profit or loss eventually established charged to present Schwabacher partners.

6. Blair will add $6 million of capital from present participants, and will loan $6 million to Schwabacher for 6 months.

7. Blair is getting agreement of all Schwabacher general partners that Blair loan will be senior to their capital which Schwabacher & Co. ~~customers~~ in existence. Blair capital will be at equal risk with that of Schwabacher limited partners.

8. Another audit will be done of Schwabacher by Arthur Young & Co. as soon as possible. WEJ should prepare a letter to Schwabacher requiring this audit under our rule, and LMcC should attempt to expedite Arthur Young & Co. doing it.

9. Landman ll spend the major part of is time at Schwabacher for the next six monchs, and is assigning two o. nis top executvies to that location.

10. After the merger, the West Coast operations will be known as the "Schwabacher Division of Blair & Co., Inc."

B

Robert M. Bishop, Director
Department of Member Firms.

cc: WEJ
LHC

Exhibit K

MEMORANDUM

PIES EXHIBIT 146
WITNESS BISHOP
REPORTER AHM
DATE 1-7-75

December 3, 1968

SUBJECT: Schwabacher & Co.

On December 2, 1968, R. John Cunningham, Lloyd McChesney and I met all day at the SEC on Schwabacher & Co. Schwabacher was represented by Albert E. Schwabacher, Jr. and two attorneys, Messrs. Lucas and McKee. The SEC staff was headed by Irving Pollack and Stanley Sporkin, with William Dilger and Theodore Miles, and Arthur Pennekamp (San Francisco Regional Administrator) as the most frequent attendees.

The principal problem was the SEC administrative proceedings against Schwabacher. The previous week the Commission had refused to accept an offer of settlement which limited penalties against individuals in the firm to censures. Blair & Co., Inc., a prospective merger possibility, was not interested in a merger if penalties by the SEC were to go beyond censure, but were willing to accept any penalties imposed by the Exchange.

In the early morning we were told definitively by Mr. Siegel, attorney for Blair & Co., Inc., that Blair had decided not to pursue the merger because they had been advised the night before by Arthur Young & Co. that they could not complete an audit within six months, and that even then they might not be able to certify the ~~the~~ Schwabacher assets and liabilities. We had been told earlier in the morning by William Lendman of Blair of this difficulty. When Blair thus terminated merger discussions, Schwabacher said that they would seek merger with Mitchum, Jones & Templeton, Incorporated, and that they had almost completed arranging $3 million of interim financing from the Union Bank of Los Angeles.

While those discussions were underway, a telephone call was received from Mr. Lendman, who was meeting in Chicago with J. Pritzger, Blair lender. Mr. Lendman said that they had decided that Blair would be willing to loan money to Schwabacher for longer than the original six months contemplated, and would like to have 11 days for Arthur Young & Co. to take a look at Schwabacher to determine the audit possibilities more precisely.

I told Mr. Lendman that the Exchange was not willing to wait longer for money to be placed in Schwabacher and that we wanted at least $3 million on Monday and would wait for the other $3 million for 11 days. After conferring with Pritzger, this condition was accepted a little later and Blair also dropped their demand that the SEC agree not to impose sanctions on individuals. The only condition lacking

in a firm agreement was to give Pritzger time to read the loan agreements, which he agreed to do during the afternoon and call me at home at night. The money would then be deposited with Schwabacher before the opening on December 3rd.

The Schwabacher offer of settlement with the SEC was then revised and carried to the Commission by the SEC staff. When they returned they said that the Commission was prepared to accept it after the capital was deposited in Schwabacher by Blair.

However, while the SEC staff was meeting with the Commission we were told by the Schwabacher representatives that their partners' meeting in California had been distrubed by the Blair & Co. termination of the merger negotiation in the early morning, and that they preferred to go ahead with the $3 million loan from the Union Bank. This would give them more flexibility in both continuing discussions with Blair and having discussions with Mitchum, Jones.

Earlier, we had all talked by conference telephone with Mr. Lamar Webb of the Union Bank, and reached agreement on a form of commitment telegram that he would send to me, providing for a personal loan to five or six Schwabacher partners, who would in turn subordinate this money to the firm.

As the evening concluded, our final arrangement with Schwabacher was that we would give them until December 15th to come to a firm decision and arrange as to a merger, demm and that in the event they did not decide to merge that they would present a plan at that time for selling several branch offices.

By the end of the day, there was a clear understanding that the SEC was likely to accept whatever disciplinary action the Exchange takes if it is reasonably adequate, probably censuring the firm and individuals, taking into consideration the Exchange's action. If the SEC did not think that the Exchange's discipline was reasonable they would have the right of imposing harsher penalties themselves.

Robert M. Bishop, Director
Department of Member Firms

BEST COPY AVAILABLE

Exhibit L

December 3, 1968

Pfs EXHIBIT 144
WITNESS Bishop
REPORTER KRM
DATE 1-7-75

Schwabacher & Co.
100 Montgomery Street
San Francisco, California 94104

Attention: Mr. Albert E. Schwabacher, Jr.

Gentlemen:

Pursuant to our agreement yesterday, your firm is to inform us by December 15 whether you will merge with another firm or sell a number of branch offices. We expect the terms of any merger to be firm by that date, although the related documentation may not be complete. If you elect to sell branches, we will expect sale arrangements to be well in progress at that time.

Pursuant to Rule 417, your firm is directed to have an audit by an independent public accountant and to prepare answers to a financial questionnaire based on such audit as soon as possible, but in any event not later than December 31, 1968. We would consider some extension of this date if the auditor you choose could not meet this date but could do so in January.

Please advise us promptly that arrangements have been made with a national accounting firm with substantial stockbrokerage experience for such audit. Also, please advise us of the date as soon as it has been set.

Sincerely,

/s/ ROBERT M. BISHOP

Robert M. Bishop
Vice President

WEJ:RMB/jmd

Exhibit M

Schwabacher & Co.

INVESTMENT SECURITIES
100 MONTGOMERY STREET AT SUTTER
TELEPHONE 781-5000
SAN FRANCISCO

MEMBERS
NEW YORK STOCK EXCHANGE · AMERICAN STOCK EXCHANGE · PACIFIC COAST STOCK EXCHANGE
AND OTHER LEADING SECURITY AND COMMODITY EXCHANGES

SAN FRANCISCO · LOS ANGELES · FRESNO · HONOLULU · LAS VEGAS · MONTEREY · OAKLAND · PALO ALTO

NEW YORK · SACRAMENTO · SALT LAKE CITY · SAN JOSE · SANTA BARBARA · SANTA ROSA · STOCKTON · YUMA

December 12, 1968

Mr. Robert M. Bishop
New York Stock Exchange
Eleven Wall Street
New York, N. Y. 10005

PLFS EXHIBIT 147
WITNESS BISHOP
REPORTER ARMI
DATE 1-7-75

Dear Mr. Bishop:

We have delayed answering your letter of December 3rd until we had something very positive to report.

Today we have agreed in principal to merge with Blair & Co., Inc. Enclosed is a letter of intent broadly outlining the terms.

Perhaps the single most important ingredient from Blair's standpoint in making this merger is the report of two Arthur Young auditors who spent several days in our office this week and gave Bill Landman a really positive report on the progress of our back office since they were in 6 or 8 months ago.

In connection with Rule 417, as we discussed on the telephone, it will be impossible to get an accounting firm in here at the present time. Prior to our arrangement with Blair & Co., Inc. we had secured the promise that the Arthur Andersen people will be available and able to handle our audit as of the end of February 1969. They estimate it will require 30 people and it will be impossible for them to secure this staff prior to that time. We know you will agree with us that it is in everyone's best interest that we have a firm of Arthur Andersen's stature do this.

Schwabacher & Co.

Even though we have made arrangements to proceed on this basis, it is possible Blair may wish to have their accounting firm, Arthur Young & Co., proceed in another fashion, and I am sure Mr. Lendman will be discussing this with the Exchange.

We will, of course, keep you advised of further developments. Meanwhile, please advise me if there is anything further you wish at this time.

Sincerely,

A. E. Schwabacher, Jr.

AESJr:mc
Encl.

12-12-68-F

Blair & Co., Inc. - Proposed
Acquisition of Schwabacher & Co.

The following are the principal terms of the proposed acquisition of Schwabacher & Co. by Blair & Co., Inc.:

1. The effective date of the acquisition will be as soon as practicable. It is anticipated that this will be March 1, 1969.

2. Upon the effective date of the acquisition, Blair will provide $3,000,000 of capital to repay the Schwabacher & Co. Union Bank loan.

3. Upon acquisition, substantially all of the general partners of Schwabacher & Co. will become stockholders of Blair. The amount of stock to be offered to the general partners of Schwabacher & Co. will be at least $2,625,000. The Blair stock will be offered in units of common and preferred, at book value, in accordance with the general practice of Blair & Co. It is expected that the Schwabacher partners will own approximately 28% of the common stock of the combined firm. All general partners will be offered stock in proportion to their general capital accounts, except that at least 2/3 of the stock issued to Albert E. Schwabacher, Jr., and to

William M. Cahn, Jr., would be nonvoting, and all of the stock issued to Clarence E. Heller and Jacob G. Schurman, III, would be nonvoting.

4. Albert E. Schwabacher, Jr., will have no managerial responsibility with Blair & Co., Inc., for a period of one year.

5. All of the balance of the capital of the firm of Schwabacher & Co., including excess capital of Albert E. Schwabacher, Jr., and other general partners, subordinated loans of securities, and limited capital, would become subordinated debt of Blair & Co., Inc., except that approximately $200,000 thereof will be released to cover hardship cases as soon as the same may reasonably be done. In accordance with the present practice of Blair & Co., Inc., subordinated loans of securities would be entitled to a return of 3% per annum (in addition to the dividends and capital gains on such securities), and subordinated loans of cash would bear interest at 8% per annum. All subordinated debt issued to the Schwabacher group will be on standard New York Stock Exchange forms and will mature two years after the closing date, subject to the standard limitation of the New York Stock Exchange that no payment of subordinated debt may be paid if capital is impaired. The subordinated debt issued to the Schwabacher group will not be subordinated to the existing Blair debt.

Notwithstanding the two-year maturity of the subordinated debt issued to the Schwabacher group, it is anticipated that the Schwabacher partners who become shareholders of Blair will have a continuing moral obligation to provide to the capital of the combined firm an amount of the total required capital commensurate to their share of the equity. By the same token, Blair will have a moral obligation to release excess capital to the Schwabacher group, prior and after the two-year maturity, until the total subordinated capital supplied by each group is pro rata to their equity. Nothing contained herein shall be construed to impose any obligation, moral or otherwise, to pay or release any securities reasonably required to protect Blair against losses and expenses which may be incurred for the account of the holder thereof.

6. The offices of Schwabacher & Co. taken over by Blair & Co., Inc., would operate under the name Schwabacher--Division of Blair & Co., Inc. Consideration will be given to a change in the Blair name to include the Schwabacher name.

7. A new audit, to be conducted during the first six months of 1969 by a national accounting firm, will be used as the basis for the acquisition. All income of Schwabacher & Co. not on the books as of the audit

date will remain as income of Schwabacher & Co., in liquidation. Similarly, all prior losses incurred by Schwabacher & Co. would be for the account of the old partnership. The direct expense involved in cleaning up the fails and suspense items would be for the account of the Schwabacher partners, as would be all profits and losses incurred in connection therewith. Such expenses and losses for the accounts of the Schwabacher partners would be charged by Blair & Co., Inc., to the accounts of the Schwabacher & Co. partners quarterly. All securities issued by Blair to the Schwabacher group (other than securities representing present Schwabacher subordinated loans and limited capital) will be held in escrow by Blair as security for each partner's respective share of such losses and expenses. As such losses and expenses are realized, such charges would be made against the subordinated indebtedness of such Schwabacher & Co. partners with Blair & Co., Inc., to the extent thereof and otherwise would be charged to their equity position in the firm. The same situation will apply with respect to losses incurred prior to the closing date. At the end of two years, all such securities shall be released from escrow, except to the extent of a reasonable reserve established for any losses and expense not then realized.

8. All of the partners of Schwabacher & Co. who became stockholders of Blair & Co., Inc., would initially continue on the same salaries as are paid to them by Schwabacher & Co., but Blair & Co., Inc., would have the right to adjust such salaries in accordance with performance.

9. The proposed acquisition is based upon the assumption that Schwabacher & Co. will deliver its organization substantially intact, and is subject to required approvals of the stockholders of Blair & Co., Inc., and all regulatory agencies.

Exhibit N

ORRICK, HERRINGTON, ROWLEY & SUTCLIFFE
COUNSELORS AND ATTORNEYS AT LAW
405 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104

December 14, 1968

Mr. Lee D. Arning
Vice President
In Charge of Operations
New York Stock Exchange
[illegible] Wall Street
New York, New York 10005

In re: Schwabacher & Co. - SEC Proceedings

Dear Mr. Arning:

Enclosed is a copy of our revised Offer of Settlement in the above matter, together with my cover letter to Stanley Sporkin.

Yours very truly,

Richard J. Lucas

Richard J. Lucas

RJL:plk
Enclosure

ORRICK, HERRINGTON, ROWLEY & SUTCLIFFE
COUNSELLORS AND ATTORNEYS AT LAW
405 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104

December 18, 1968

Mr. Stanley Sporkin
Associate Director
Division of Trading and Markets
Securities and Exchange Commission
500 North Capitol
Washington, D.C.

In re: Schwabacher & Co. - SEC Proceedings

Dear Mr. Sporkin:

Enclosed are an original and five copies of a revised Offer of Settlement on behalf of Schwabacher & Co. in the above matter.

I believe it incorporates all of those revisions which we agreed upon in your offices on Monday, December 2. Certain changes in the agreement between Schwabacher and Blair have resulted in some changes in the Offer itself. For example, you will note that the Offer is no longer conditioned on Blair's deposit of $6,000,000 in cash in Schwabacher & Co. for the reason that Schwabacher & Co. has already added $3,000,000 to its capital and did so on December 4, 1968.

Please note that paragraph III A differs from the earlier two offers of settlement. The earlier two offers were made on behalf of both Schwabacher & Co. and Albert E. Schwabacher, Jr. The enclosed Offer is made only on behalf of Schwabacher & Co. with the understanding that the responsibility of individual partners will be determined in later proceedings before both the New York Stock Exchange and the Securities and Exchange Commission. For that reason the word wilfull has been deleted from III A.

As you know, we have always objected to the use of the word "wilfull" in the offer of settlement and acceded to the use of the word in our original offer of settlement

only because of the then posture of the matter and our belief that the offer would be accepted and would resolve the proceedings against both Schwabacher & Co. and Albert E. Schwabacher, Jr.

We are in full agreement with you and Mr. Pollack that it is fairer to defer the question of individuals' responsibilities until all the facts can be brought to light in an orderly proceeding. Since additional proceedings will be had against individuals, we think it both prejudicial and inappropriate to stipulate, on behalf of the company, to wilfull violations. Bearing in mind that the company can only act through individuals, since the individuals' conduct will be inquired into at a later date after full and fair hearings on the matter, we believe it is unnecessary, from the Commission's point of view, to include the word wilfull, and premature and prejudicial from the individuals' point of view. I wanted to discuss this with you by telephone Friday and would like to discuss it with you by phone Monday or, if you wish, in person in Washington at any time convenient for you.

Please note that we have also added a section (Section IV) on mitigation. This section synthesizes and updates the memorandum "Mitigating Circumstances re Offer of Settlement" filed with the Commission on November 27, 1968. The updated material shows, I believe, that Schwabacher & Co. is in control of its current operations.

Yours very truly,

RICHARD J. LUCAS

Richard J. Lucas

RJLrplk
Enclosures
cc: Mr. Arthur E. Pennekamp
Mr. Albert E. Schwabacher, Jr.
Mr. William M. Landman
Norman M. Segal, Esq.

BEST COPY AVAILABLE

Administrative Proceeding
File No.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of SCHWABACHER & CO. File No. 8-3913	OFFER OF SETTLEMENT

I

Respondent Schwabacher & Co., pursuant to Rule 8 of the Rules of Practice of the Securities and Exchange Commission, offers settlement with respect to the matters alleged in the Commission's "Order for Private Proceedings pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934", dated July 11, 1968 (the "Order"), in Administrative Proceeding File No. 3-1635-5.

This Offer of Settlement (the "Offer") is submitted for the purpose of settlement only, and is submitted on the express understanding that it will not be used in any way in the said proceeding or otherwise or in any other proceeding or in any private or public action, unless the Offer is accepted by the Commission as hereinafter set forth; and in no event is it an admission of any violation of law; and no fact stated herein constitutes an admission by respondent

which may be used in any other proceeding, whether civil, administrative or criminal, which may be brought by or against it before any court, administrative agency or other tribunal.

If the Offer is not accepted by the Commission, the Offer is withdrawn, neither the Offer nor any part thereof shall become a part of the record in this proceeding, and it is proposed without prejudice to respondent Schwabacher & Co.

II

If the Offer is accepted, the Commission may make such conclusions and may issue such order, as hereinafter provided, and as may be permitted by law; provided, however, that the maximum sanctions which may be imposed upon respondent in this proceeding shall be those set forth in Section III of this Offer.

III

On the basis set forth above, without admitting any of the allegations of the Order, or any violation of law, for the purpose of settlement only, and if this Offer is accepted, respondent will consent to the entry of findings and an order:

A. Finding that respondent violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder, and Section 8(c) of the Exchange Act and Rule 8c-1(a) of the Exchange Act; namely, failure to make and maintain required records,

failure to file 1966 and 1967 annual reports on time and with certification, and wrongful hypothecation of customers' securities.

B. Censuring Schwabacher & Co., referring to and taking into account sanctions imposed or to be imposed by the New York Stock Exchange, with the understanding that respondent is willing to waive the limitations under the rules of such Exchange to the extent necessary to permit imposition of fines up to $50,000.

C. Incorporating, to the extent deemed necessary by the Commission, any of the terms of the acquisition set forth in Exhibit A hereto.

D. Requiring Schwabacher & Co. to continue making its weekly report of condition to the San Francisco Regional Office of the Securities and Exchange Commission and to the New York Stock Exchange, such reports to be consolidated so as to avoid unnecessary duplication of effort.

E. Reserving to the Commission its right to re-institute these proceedings within five days after written notice to respondent in the event of violation by Schwabacher & Co. of the applicable net capital requirements, or breach by Schwabacher & Co. of any of the present Commission or Exchange restrictions, or if respondent's books and records or operations have not materially improved or have materially

deteriorated and provided that the occasion giving rise to the right to reinstitute has not been corrected within the five days notice period. Such reservation of rights to continue until the acquisition of Schwabacher & Co. by Blair & Co., Inc. is consummated. Nothing set forth herein shall preclude the Commission from instituting new proceedings or taking such other action that would appear appropriate under the circumstances.

F. Continuing the present Commission and New York Stock Exchange restrictions until such time as Schwabacher & Co. demonstrates (insofar as Commission approval is required) to the Commission or its representative that its operation warrants the removal or modification of the restrictions. Such restrictions will not be automatically removed on the effective date of the acquisition of Schwabacher & Co. by Blair & Co., Inc. but will be removed or modified only on the basis of good cause shown by Schwabacher & Co. or its successor; providing, further, that Schwabacher & Co. or its successor may make application for such removal or modification at any time or times it believes proper.

G. Giving notice in writing to the Commission within 12 hours of any material breakdown in the acquisition negotiations or in the event of any withdrawal of net capital by any general partner of Schwabacher & Co.

IV

In tendering the foregoing Offer of Settlement, respondent represents the following to the Commission in mitigation of the pending charges set forth in the Order:

A. On December 4, 1968 six of respondent's partners obtained a loan from Union Bank in the amount of three million dollars ($3,000,000), the proceeds of which they concurrently loaned to respondent to add new capital to respondent. This three million dollars ($3,000,000) of new capital was deposited by respondent on December 4, 1968, and respondent's subordinated note representing its indebtedness to the six lending partners has been forwarded to the San Francisco Regional Office of the Securities and Exchange Commission and to the New York Stock Exchange.

B. The pendency of these charges has led respondent to negotiate for its own acquisition. Respondent's acquisition by Blair & Co., Inc., substantially in accordance with the terms and conditions annexed hereto as Exhibit A, will result in the loss of Schwabacher & Co.'s independence and autonomy and brings to an end this 50 year old firm that has played such an historic and responsible role in finance in the west.

C. Respondent's accounting problems began with its conversion to a sophisticated computerized accounting system on January 3, 1966 and were compounded by the difficulty in

loc. ... and engaging competent operations personnel experienced in this accounting system (The Midwest Stock Exchange Service Corporation). Further, respondent was experiencing these operations problems during a period of unprecedented increases in the volume of market activity.

D. Schwabacher & Co. now has control of its current operations. Control has been achieved by implementing procedures which monitor problem areas and by taking action to correct any errors thus revealed.

The following are among the most significant of the programs installed to assure current control of operations:

(1) A procedure assuring the current balance and control of trading activities on all exchanges and the over-the-counter market. The effectiveness of this procedure in isolating and correcting errors in trading activities is evidenced by the fact that as of December 6, 1968, there were only 20 items unreconciled for listed trading and, with the exception of the Pacific Coast Stock Exchange, none of these listed trade differences had existed for longer than one week.

(2) The 1400 edit, the basic edit used to maintain control of cash and securities entries to the computer records, is now processed daily to

assure that errors or rejected entries to the computer are corrected on a timely basis. Such errors are now normally reconciled within three days.

(3) Control of securities has been achieved through a weekly box count of all securities in the active box in both San Francisco and New York. Any difference between the count and the securities record is reported, and the error is located and corrected to bring the active box and the securities record into balance.

(4) Control of bank balances is maintained through a daily reconciliation in both the cashier's and the accounting departments' records. Daily reconciliation permits prompt correction of errors and simplifies the problem of monthly reconciliation when bank statements are received. As of December 6, 1968, one bank was out of balance. This problem is, however, of an historical nature; and, with the assistance of two outside auditors, the problem should be resolved soon. Furthermore, the daily reconciliation of all banks is current.

(5) The totals of fails to deliver and fails to receive have shown substantial improvement over the last three months as follows:

FAILS

Week Ending	Fails to Deliver	Fails to Receive
August 30, 1968	$28,665,000	$18,096,000
September 6, 1968	25,672,000	16,268,000
September 13, 1968	24,510,000	16,466,000
September 20, 1968	23,963,000	16,101,000
September 27, 1968	21,784,000	16,907,000
October 4, 1968	22,508,000	17,150,000
October 11, 1968	23,643,000	17,807,000
October 18, 1968	23,716,000	16,483,000
October 25, 1968	20,547,000	16,728,000
November 1, 1968	16,870,000	13,500,000
November 8, 1968	15,960,000	10,176,000
November 15, 1968	12,690,000	10,821,000
November 22, 1968	13,321,000	10,966,000
November 29, 1968	11,890,000	10,132,000
December 6, 1968	12,495,000	11,296,000

Concentrated effort will be maintained on the fails.

(6) Progress has also been made in the suspense account as follows:

SUSPENSE ITEMS

Week Ending	Long	Short
September 13, 1968	$9,578,000	$8,580,000
September 20, 1968	7,800,000	4,400,000
September 27, 1968	7,100,000	3,900,000
October 4, 1968	7,061,000	3,480,000
October 11, 1968	6,838,311	3,172,178
October 18, 1968	6,306,000	2,821,000
October 25, 1968	6,366,000	2,821,000
November 1, 1968	5,216,000	2,773,000
November 8, 1968	(no change)	(no change)
November 15, 1968	(no change)	(no change)
November 22, 1968	4,756,858	2,827,838
November 29, 1968	4,337,770	2,190,057
December 6, 1968	4,231,083	2,079,555

Six auditors from Arthur Andersen & Co. were obtained during the last part of November and are assisting Schwabacher's staff in attacking the suspense account problem.

(7) Special efforts have also been made with respect to customer complaints. On November 13, 1968, 1,149 customer complaints were open. On November 22, 1968, the number of open customer complaints had been reduced to 657. As of December 6, 1968, the number was down to 363.

The cashiering department has been completely reorganized and, among its other tasks, processes all customer complaints on a current basis. During the week ended December 6, 1968, 68 customer complaints were received, while 169 were corrected. Thus, this area of operations is under control.

(8) Schwabacher & Co. is now making full and proper use of the Midwest System "edits", the checks and balances programmed into the system to isolate errors and potential errors by signaling a condition requiring correction. The total number of edits reflects both current errors and historical errors which have not been completely corrected. The number of edits for Schwabacher & Co. has shown significant improvement over the past several weeks:

TOTAL EDITS

Week Ending	No. of Edits
October 18, 1968	30,153
October 25, 1968	28,671
November 1, 1968	25,584
November 8, 1968	23,094
November 15, 1968	22,750
November 22, 1968	22,509
November 29, 1968	21,953
December 6, 1968	21,783

The reduction in edits has occurred not only because of more complete and accurate control of current operations, but also because of action taken to resolve the historical errors. Initial projects with respect to edits have concentrated on those types of edits which are most significant. Additional clean-up projects for other individual edits are planned and will be implemented. Consequently, the reduction in the total number of edits, which should be less than 10,000 per week, is expected to continue.

V

In tendering the foregoing Offer of Settlement the respondent enters into the following undertaking to the Commission:

UNDERTAKING TO THE COMMISSION

A. The proposed acquisition of the business and assets of Schwabacher & Co. by Blair & Co., Inc., substantially

in accordance with the terms and conditions annexed hereto as Exhibit A, will be consummated on or before March 31, 1969.

B. Schwabacher & Co. and Blair & Co., Inc. on or before March 31, 1969, will submit to the Commission a certificate establishing that such acquisition has been accomplished, together with all necessary documentation evidencing the consummation of such acquisition.

C. In the event such acquisition, as contemplated by this Offer of Settlement, is not accomplished within the time specified, the Commission's acceptance of the settlement shall be deemed withdrawn and proceedings against the respondent shall proceed in accordance with the Order for Proceedings.

VI

A. For the purpose of this Offer and only if it is accepted, on the bases set forth above, respondent hereby waives:

(1) Hearings in these proceedings pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934;

(2) The filing of proposed Findings of Fact and Conclusions of Law;

(3) Initial Decision by a Hearing Examiner pursuant to Rule 16(b) of the Rules of Practice, and exceptions and briefs thereto;

(4) Any right to appeal from findings and order of the Commission adverse to respondent.

B. The respondent agrees that the staff of the Division may participate in drafting the Opinion and Order of the Commission to be entered in accordance with the foregoing Offer of Settlement.

Dated: December 14, 1968.

SCHWABACHER & CO.

By _____
Albert E. Schwabacher, Jr.
Its Senior General Partner

ORRICK, HERRINGTON, ROWLEY & SUTCLIFFE

By RICHARD J. LUCAS
Richard J. Lucas
Attorneys for Respondent

December 12, 1962

Blair & Co., Inc.
24 Broad Street
New York, New York

Gentlemen:

The attached memorandum sets forth the principal terms of the proposed acquisition by Blair & Co., Inc. of Weinrebacher & Co. as discussed between us.

If you are in agreement with the terms thereof, please execute and return the enclosed copy of this letter, and thereupon this letter shall constitute evidence of our mutual intent to proceed promptly to consummate the transaction therein described.

Very truly yours,

WEINREBACHER & CO.

By _____
A. E. Weinrebacher, Jr.
Senior Partner

Approved:

BLAIR & CO., INC.

By _____
President

EXHIBIT A

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Blair & Co., Inc. - Proposed
Acquisition of Schwabacher & Co.

The following are the principal terms of the proposed acquisition of Schwabacher & Co. by Blair & Co., Inc.:

1. The effective date of the acquisition will be as soon as practicable. It is anticipated that this will be March 1, 1969.

2. Upon the effective date of the acquisition, Blair will provide $3,000,000 of capital to repay the Schwabacher & Co. Union Bank loan.

3. Upon acquisition, substantially all of the general partners of Schwabacher & Co. will become stockholders of Blair. The amount of stock to be offered to the general partners of Schwabacher & Co. will be at least $2,625,000. The Blair stock will be offered in units of common and preferred, at book value, in accordance with the general practice of Blair & Co. It is expected that the Schwabacher partners will own approximately 28% of the common stock of the combined firm. All general partners will be offered stock in proportion to their general capital accounts, except that at least 2/3 of the stock issued to Albert E. Schwabacher, Jr., and to

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William M. Cahn, Jr., would be nonvoting, and all of the stock issued to Clarence E. Heller and Jacob C. Schurman, III, would be nonvoting.

4. Albert E. Schwabacher, Jr., will have no managerial responsibility with Blair & Co., Inc., for a period of one year.

5. All of the balance of the capital of the firm of Schwabacher & Co., including excess capital of Albert E. Schwabacher, Jr., and other general partners, subordinated loans of securities, and limited capital, would become subordinated debt of Blair & Co., Inc., except that approximately $200,000 thereof will be released to cover hardship cases as soon as the same may reasonably be done. In accordance with the present practice of Blair & Co., Inc., subordinated loans of securities would be entitled to a return of 3% per annum (in addition to the dividends and capital gains on such securities), and subordinated loans of cash would bear interest at 8% per annum. All subordinated debt issued to the Schwabacher group will be on standard New York Stock Exchange forms and will mature two years after the closing date, subject to the standard limitation of the New York Stock Exchange that no payment of subordinated debt may be paid if capital is impaired. The subordinated debt issued to the Schwabacher group will not be subordinated to the existing Blair debt.

Notwithstanding the two-year maturity of the subordinated debt issued to the Schwabacher group, it is anticipated that the Schwabacher partners who become shareholders of Blair will have a continuing moral obligation to provide to the capital of the combined firm an amount of the total required capital commensurate to their share of the equity. By the same token, Blair will have a moral obligation to release excess capital to the Schwabacher group, prior and after the two-year maturity, until the total subordinated capital supplied by each group is pro rata to their equity. Nothing contained herein shall be construed to impose any obligation, moral or otherwise, to pay or release any securities reasonably required to protect Blair against losses and expenses which may be incurred for the account of the holder thereof.

6. The offices of Schwabacher & Co. taken over by Blair & Co., Inc., would operate under the name Schwabacher--Division of Blair & Co., Inc. Consideration will be given to a change in the Blair name to include the Schwabacher name.

7. A new audit, to be conducted during the first six months of 1969 by a national accounting firm, will be used as the basis for the acquisition. All income of Schwabacher & Co. not on the books as of the audit

date will remain as income of Schwabacher & Co., in liquidation. Similarly, all prior losses incurred by Schwabacher & Co. would be for the account of the old partnership. The direct expense involved in cleaning up the fails and suspense items would be for the account of the Schwabacher partners, as would be all profits and losses incurred in connection therewith. Such expenses and losses for the accounts of the Schwabacher partners would be charged by Blair & Co., Inc., to the accounts of the Schwabacher & Co. partners quarterly. All securities issued by Blair to the Schwabacher group (other than securities representing present Schwabacher subordinated loans and limited capital) will be held in escrow by Blair as security for each partner's respective share of such losses and expenses. As such losses and expenses are realized, such charges would be made against the subordinated indebtedness of such Schwabacher & Co. partners with Blair & Co., Inc., to the extent thereof and otherwise would be charged to their equity position in the firm. The same situation will apply with respect to losses incurred prior to the closing date. At the end of two years, all such securities shall be released from escrow, except to the extent of a reasonable reserve established for any losses and expense not then realized.

8. All of the partners of Schwabacher & Co. who became stockholders of Blair & Co., Inc., would initially continue on the same salaries as are paid to them by Schwabacher & Co., but Blair & Co., Inc., would have the right to adjust such salaries in accordance with performance.

9. The proposed acquisition is based upon the assumption that Schwabacher & Co. will deliver its organization substantially intact, and is subject to required approvals of the stockholders of Blair & Co., Inc., and all regulatory agencies.

Exhibit O

NEW YORK STOCK EXCHANGE

MEMORANDUM

September 17, 1968

PIES EXHIBIT 126
WITNESS BISHOP
REPORTER
DATE 1-7-75

TO: Mr. David Fuchs

FROM: A. R. Mannarino and A. V. Savoca

SUBJECT: Blair & Co. - Cost Consultation on September 13 held at their office.

Present were the following operations personnel: Messrs. Jim Rush, Bruce Anderson, Vincent Cerrich, Larry Fazzinello and Mike Golden.

Background

Blair & Co. was a Group 2 firm with a return on SCI of 2.2%. They are in the midst of an expansion program which started last year. The firm had a cost consultation in 1967 and intends to have one every year hereafter.

Since the firm is in the process of expansion, the most important point of discussion was those income per employee and general partner.

Income Per Employee

Blair & Co. had 125 more employees than the average firm in Group 2. They ranked sixth in number of personnel while ranking 17th in gross income. As a result of this their gross income per employee and general partner was $20,000 compared to the group average of $39,509 making them last of the 24 firms in their group.

Registered representatives accounted for most of their employees. Blair employed over 200 more than the average firm placing them second in their group. The large sales force is the result of their expansion program which started 2 years ago when they merged and acquired some smaller firms. Although the firms gross income per employee was low they have experienced record growth in almost every area of income and expect this growth to continue. Many of the firms RR's who were newly registered during the year and had low production are expected to increase their productivity so that this statistic should improve greatly next year.

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MISCELLANEOUS POINTS

Cost Statistics

The firm is a member of the Wright Associate group. However, they feel that cost statistics given in our consultations are better in that we compare firms based on size rather than grouping all firms together as does the Wright analysis.

Floor Brokers

Approval has been given recently for the placing of more men on the floor. However, the firm is experiencing difficulty in finding these people.

Stock Loan Department

In 1960, the firm started a Stock Loan Department and expect a large profit on interest this year.

Conclusion

Since this firm had a cost consultation last year, points covered at that time were written up in the memo prepared then.

Exhibit P

NEW YORK STOCK EXCHANGE — DEPARTMENT OF MERGER FIRMS

August 1, 1968

Pltfs EXHIBIT 120
WITNESS Bishop
REPORTER [illegible]
DATE 1-7-75

Report on Visit to Blair & Co., Inc.

Re: Possible Acquisition of the Domestic Offices of A. L. Stamm & Co.

The offices of Blair & Co., Inc. were visited on July 30, 1968 to determine the corporation's ability to take over the operations of the domestic branch offices of A. L. Stamm & Co.

Mr. James B. Ramsey, Jr., Executive Vice President, stated that at the present time, the corporation is merely considering this acquisition.

As of June 30, 1968, the corporation's capital position as shown on the operations questionnaire was as follows:

Aggregate Indebtedness	$50,230,000
Net Capital	3,702,000
Ratio	1,358%
Commitments	3,237,000

Based on information supplied by Mr. Ramsey and Mr. Stephen T. Monahan, Vice President, the effect of a possible acquisition of A. L. Stamm & Co.'s domestic offices, on the corporation's Net Capital as stated above, would be approximately as follows:

Blair & Co., Inc.

Aggregate Indebtedness	$50,250,000
Approximate amount of A. L. Stamm & Co. customer debit balances to be financed and free credit balances	29,500,000
Total	$79,750,000
Requirement 1/20	$ 3,987,500
Net Capital 6/30/68	$ 3,702,000
Additional capital to be contributed by Blair & Co., Inc. Stockholders	2,657,000
Estimated capital to be contributed by Mr. Alfred Stamm	3,000,000
	$ 9,359,000
Less: Approximate value of unlocated shorts at Audit Date 5/31/68	1,000,000
	$ 8,359,000
Less: Possible capital charge of 30% on Fail to Deliver securities over 30 days ($6,447,000) 6/30/68	1,934,100
Total estimated Net Capital	$ 6,424,900

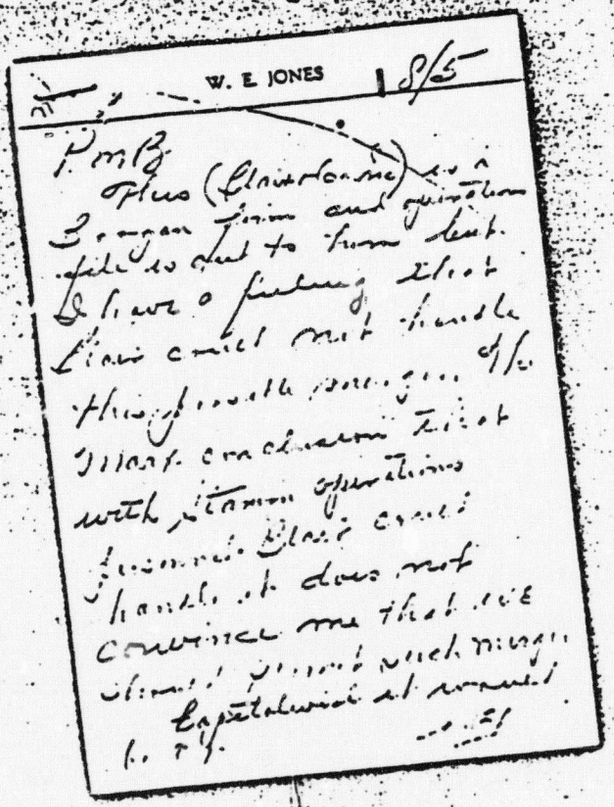
I was advised by Mr. Monahan that Blair & Co., Inc. was not experiencing any apparent operational difficulties.

I was further advised by Mr. Monahan that A. L. Stamm & Co. does about 1,200 trades a day which would represent an approximate increase of 6% to Blair & Co., Inc. If Blair & Co., Inc. were able to retain the operations employees of A. L. Stamm & Co. it would appear that it could handle the acquisition.

M. M. Marx - Examiner

hk
(LAB)

PLF EXHIBIT 121
WITNESS BISHOP
REPORTER GRM
DATE 1-7-72



BLAIR & Co., INC.

20 BROAD STREET
NEW YORK, N. Y. 10005

Cable Address
OCBLAIR NEWYORK
Telephone
DI 4-4000

Members
New York Stock Exchange
American Stock Exchange
Midwest Stock Exchange

October 2, 1968

C. R. Q

New York Stock Exchange
Department of Member Firms
11 Wall Street
New York, New York

Attention: Mr. Lancelot Allen

Gentlemen:

This is to advise you that Blair & Co., Inc. will finalize the acquisition of the Miami Beach and Palm Beach branches of A. L. Stamm & Co. on October 7, 1968.

Very truly yours,

Benjamin H. Hepburn

BENJAMIN H. HEPBURN
Secretary

T:ks

Acquisition - Stamm

325

DEPARTMENT OF
MEMBER FIRMS

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N.Y. STO[illegible]ANCE

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Exhibit Q

Name of Respondent Blair & Co., Inc. Current Report as of March 28, 1969 (Date)

	Current As of 3/28/69 (Date)			Previous Report As of 2/28/69 (Date)		
6. If response to any section of question 5 is "NO" show the following:	Total of Details	Balance in Control Account	Differences	Total of Details	Balance in Control Account	Differences
(a) Customers' Accounts						
(b) Fail to Receive						
(c) Fail to Deliver						
(d) Stocks Borrowed						
(e) Stocks Loaned						
(f) Bank Loans						
7. Most recent capital position.	(Date) 3-28-69			(Date) 2/28/69		
Aggregate Indebtedness		# 07,820,263			56,915,428	
Net Capital		# 7,581,152			4,200,369	
Ratio		# 1,295.			1,355%	
Market Value of Proprietary Security Positions		4,662,236			4,343,557	
Net Worth		# 32,514,927			15,123,877	
8. As of what date were customers' statements last mailed?		4/8/69			3/8/69	
Approximate number of customers' statements mailed.		38,864			40,113	
Approximate number of customers' statements which required corrections.		48			55	
Approximate number of customers' complaints last month.		50			50	

-1,144,600 Excess

PIG EXHIBIT 271
WITNESS BISHOP
REPORTER GRIM
DATE 1-8-75

3228

Figures include our Western Division, Formerly Schwabacher & Co.

Name of Respondent Blair & Co., Inc. Current Report as of March 23, 1969 (Date)

	Current As of 3/23/69 (Date)		Previous Report As of 2/28/69 (Date)	
9. When was the last time that a physical count was made of:	Date	# of Differences	Date	# of Differences
(a) Securities in active box.	**			
(b) All other securities in physical possession.	**			
(c) When was the last time detail of open transfer items were compared to stock record.	**			
10. When were the following last confirmed?				
(a) Fail to Receive	3/28/69		2/28/69	
(b) Fail to Deliver	3/28/69		2/28/69	
(c) Stocks Loaned	3/28/69		2/28/69	
(d) Stocks Borrowed	3/28/69		2/28/69	
(e) Bank Borrowings	3/28/69		2/28/69	
11. (a) Greatest number of business days for which any omnibus account (and other accounts carried by other brokers for your firm) is not reconciled.	None		None	
(b) Latest date to which all bank accounts have been reconciled.	2/28/69		1/31/69	
Dollar difference unresolved.	($) None		($) None	

**A complete count was made the weekend of 3/15/69 wherein all securities and collateral positions have been counted and the results of this count will be reported on a subsaquent

Name of Respondent Blair & Co., Inc. Current Report as of March 28, 1969 (Date)

12. Complete the following:	Current As of 3/28/69 (Date) Approx. #Items	(*) Ledger Debit (Credit)	(*) Mkt. Val. Long (Short)	Previous Report As of 2/23/69 (Date) Approx. #Items	(*) Ledger Debit (Credit)	(*) Mkt. Val. Long (Short)
(a) Suspense Accounts	258	553,711 (248,723)	246,648 ([illegible])	410	331,115 ([illegible])	257,225 ([illegible])
(b) Difference Accounts	0	** (**)	- (-)	0	** (-)	- (-)
(c) Dividend Accounts (Non-current)	620	272,722 (554,706)	4,650,000 ([illegible])	675	315,688 (473,615)	4,800,000 (344,000)
(d) Stock Record Differences	160		250,000 (155,000)	138		355,000 (167,000)
(e) Unsecured Accounts of: Customers	374	182,769.68	(130,270.00)	379	176,533.90	(140,401.00)
Brokers	0	None	(None)	0	None	(None)

(*) Ledger Balances and Market Values should be reported broad.
(**) Difference accounts balances have been transferred to suspense accounts. The balance reported on Line 12A represents the consolidated difference and suspense accounts reported broad.

330

Name of Respondent Blair & Co., Inc. Current Report as of March 29, 1969 (Date)

	Current As of 3/28/69 (Date)	Previous Report As of 2/28/69 (Date)
13.(a) Number of Producing "Partners" and Registered Representatives?	380	380
(b) Number of personnel on full time internal audit staff?	6	6
(c) Number of operations personnel exclusive of (b) above?	466	446
(d) Number of all other personnel.	218	239
Total personnel	1,070	1,051

To be signed by Benjamin H. Hebbard
(Chief Executive)

and [illegible]
(Member or Allied Member in Charge of Operations)

THERE MUST BE A RESPONSE TO ALL QUESTIONS OF THIS QUESTIONNAIRE.
IF YOU HAVE NOTHING TO REPORT TO A PARTICULAR QUESTION STATE "NONE".

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NEW YORK STOCK EXCHANGE

Department of Member Firms

April 16, 1969

TO: Advisory Committee

FROM: Department of Member Firms

SUBJECT: Blair & Co., Inc. - Violation of Rule 325

PLS EXHIBIT 169
WITNESS Bishop
REPORTER G.R.M.
DATE 1-7-75

PROBLEM

Did Blair & Co., Inc. violate the Exchange's Net Capital Requirements Rule 325?

VIOLATION AND EXPLANATION

Rule 325.15(8) provides that "dividends receivable recorded after the ex-dividend date shall be considered as a current asset unless they represent claims which are not readily collectible". Examiners consider that dividends receivable which originated more than 30 days prior to a questionnaire date are not readily collectible under this clause, and are therefore a charge against capital.

In their questionnaire as of May 31, 1968, Blair & Co., Inc. reported cash dividends receivable of $256,470 and security dividends receivable of $1,613,275 without any indication as to what parts of these figures were more or less than 30 days old. Consequently, the entire sum was charged by Examiners in analyzing the firm's questionnaire. This computation initially showed a ratio of net capital to aggregate indebtedness of 2854% with $820,352 needed to meet the net capital requirement, with no charge for unlocated short security differences valued at $858,296.

Blair & Co., Inc. later produced a breakdown of their dividends receivable less than 30 days old which improved capital to show an adjusted analysis as of May 31, 1968 as follows. A capital computation of recent date also follows:

	May 31, 1968	February 28, 1969
Net Worth	$ 9,365,106	$14,683,000
Aggregate Indebtedness	53,748,000	56,988,000
Net Capital	2,503,455	5,947,000
Ratio	2147%	959%
Commitments	5,463,000	5,756,000
Net Capital Requirement	2,687,000	2,849,400
Excess Net Capital	-	3,097,600
Capital Deficiency	183,945	-

Blair & Co., Inc. had interpreted the rule concerning dividends receivable as permitting them not to charge receivables which were subsequently collected within 30 days after the questionnaire date, and if that interpretation were allowed the corporation would not have been in violation at the questionnaire date. However, such an interpretation is inconsistent with the basic intent of the capital rules of requiring net capital related to the measurement of business shown by the firm's books at a questionnaire date or at dates when capital positions are otherwise computed.

Discussion of these varying points of view and the breakdown of dividends receivable in the proper way consumed a long period of time with the result that the firm's letter of explanation of the violation is dated March 19, 1969 and is attached as Exhibit A.

The letter also points out that the violation would not have occurred if a proposed subordinated loan of $1 million cash submitted on May 10, 1968 had been approved by the Exchange. The proposed subordinated loan would have involved a loan by a partnership to a trust and by the trust

to an individual who would have subordinated to the firm. The Exchange advised that it would be preferable if the lending partnership subordinated capital directly to the member corporation. However, documentation was never submitted to make this loan effective, the loan subsequently being made in an alternative permissible way.

BACKGROUND

Blair & Co. was admitted as a member organization on January 10, 1957. On November 1, 1963 the name was changed to Blair & Co., Granbery, Marache, Inc., subsequently being changed to its present form on April 1, 1966.

Until March 13, 1969 the corporation conducted a retail securities business through its main office in New York City and through 37 branches, employing approximately 306 registered representatives. On March 13, 1969 the corporation acquired an additional 16 branches and 237 registered representatives, by acquisition of Schwabacher & Co. The corporation has not previously violated Rule 325.

QUESTION FOR DISCUSSION

Did Blair & Co., Inc. violate the Exchange's Net Capital Requirements Rule 325?

BLAIR & CO., INC.
20 BROAD STREET
NEW YORK, N.Y. 10005

OFFICE OF THE PRESIDENT

TELEPHONE 344-6000

March 19, 1969

Mr. George H. Newman
New York Stock Exchange
11 Wall Street
New York, New York 10005

PLFS EXHIBIT 167
WITNESS BISHOP
REPORTER GROH
DATE 12-9-75

Dear Mr. Newman:

This letter is in response to yours of February 24th addressed to Mr. James B. Ramsey, Jr., relating to our answers to the Regular Financial Questionnaire as of May 31, 1968. This response has been delayed because, at this point, it is imperative that we review all the data relative to this very serious problem.

Before going further, we wish to assure you that Blair & Co., Inc. has a capital ratio of approximately 750% and a combined ratio of 1214% including the Schwabacher acquisition. We fully intend and have the mechanics to maintain a ratio of less than 1500% as you have requested.

With respect to the Rule 325 problem, the difficulty in this area relates primarily to the definition of the current status of dividend receivables and short positions in dividend account. Our accounting and reporting has been guided in the past by section 2115.15 sub-paragraph (8) of Rule 325, which emphasizes the collectibility of dividends in determining current status. We, and our auditors, have assumed that subsequent collection and/or receipt of stock in the ordinary course of business was sufficient evidence to classify a dividend short or receivable as current.

The answers as filed indicated dividend debits of $256,470 and valuation of dividend shorts of $1,013,275. This is the area of principal concern in evaluating our position with respect to Rule 325.

Subsequent to filing the answers, we supplied you with dividend data indicating subsequent collection, receipt of stock, due bills, etc., all reviewed by our auditors, which more than offset the $910,332 indicated by you.

At this point, we were informed that this information was not acceptable and that, in the view of New York Stock Exchange Examiners, dividend shorts and debits originating more than 30 days prior to the questionnaire date, were to be classified as non-current. We have adjusted our record-keeping and internal procedures to report and control dividend debits and shorts on this basis and treat over 30 day items as non-current.

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Subsequently, as you are aware, we furnished the Exchange with data geared to the 30 day concept which was acceptable and substantially reduced your computation from $820,352 to $181,945. We could probably do more in this area, but with the passage of time the task becomes impracticable.

In the flow of correspondence between us, we asked your consideration of the following items in any determination by you.

1. On May 10th we requested approval of the Exchange for additional subordinated cash in the amount of $1,000,000 from a non-voting stockholder. This capital was readily available prior to May 31st, but approval was not obtained until July 19th.

2. At May 31st, the firm held approximately $1,000,000 of securities subject to investment letter. These securities were not reported in the Answers to the Questionnaire. I believe under certain circumstances the Exchange has allowed partial capital credit for such items.

3. At and prior to May 31, 1968, stockholders were committed to apply a portion of the proceeds of a $2,100,000 guaranteed note to firm capital. On July 31, 1968, $662,000 was added to capital from this source.

I know the above is a repetition of much that has been said and written previously. However, any determination relating to Rule 325 is a very serious matter to us. And, at this time, with the acquisition of Schwabacher successfully consummated, the results could be extremely detrimental.

In your final decision relating to the disposition of this matter, we respectfully request your consideration of the following:

1. The substantial amount of funds originating prior but added to firm capital shortly after May 31, 1968.

2. The confusion with the definition of a current dividend item or the so-called 30 day rule, which is not a published interpretation to our knowledge.

3. The absence of any credit for investment letter securities held by the firm.

Yours very truly,

H. H. Hepburn

H. H. Hepburn
Assistant to the Office of the President

July 3, 1969

Mr. James B. Ramsey, Jr.
Blair & Co., Inc.
20 Broad Street
New York, New York 10005

PIG EXHIBIT 178
WITNESS Bisher
REPORTER Geh
DATE 1-7-75

Dear Mr. Ramsey:

As you know, the answers to the Regular Financial Questionnaire as of May 31, 1968, prepared by Arthur Young & Company, have been the subject of numerous letters and discussions.

The answers originally were analyzed to show a ratio of 2854%, with $820,352 needed to meet the minimum capital requirements. Based on additional information submitted by the corporation, an adjusted ratio of 2147%, with $183,945 needed to meet minimum requirements, was computed.

We have given careful consideration to the circumstances which you have attributed to Blair & Co., Inc.'s apparent violation of Rule 325. In view of the circumstances, the Exchange has determined not to pursue the matter further at this time.

We do feel it apropos to state that in view of Rule 325.15(8), the Exchange considers dividends receivable which originate more than 30 days prior to a questionnaire date are not readily collectable and are therefore a charge against capital. We understand the corporation has adjusted its record keeping and internal procedures to report and control debts and shorts on the basis of Exchange interpretation and treat over 30 day items as non-current.

Mr. James B. Ramsay, Jr. July 3, 1969

You, I am sure, realize the capital requirements of the Exchange are part of a program which attempts to safeguard the public and it is incumbent upon the corporation and those persons responsible for computing capital, to be aware constantly of the capital position as well as being familiar with the Capital Rule and its Supplementary Material. Should your net capital at some future date be less than the minimum required due to a similar situation, or for any other reason, it would be necessary to report the matter to the Advisory Committee of the Board of Governors for whatever action it deems necessary under the circumstances.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

/s/ ROBERT M. BISHOP

Robert M. Bishop
Vice President

RMSpies:nt

Exhibit R

NEW YORK STOCK EXCHANGE

Department of Member Firms

February 17, 1969

TO: Board of Governors

FROM: Department of Member Firms, and
Schwabacher & Co. and its General Partners

SUBJECT: Statement of Facts, Charges and Admission of Violations of Rule 440 and SEC Rule 17a-3, both dealing with the maintenance of books and records, Rules 402 and SEC Rule 8c-1, both dealing with the segregation and hypothecation of securities, and Rule 342 (supervision and control), Rule 401 (good business practice) and Rule 417.11 (audits)

STATEMENT OF FACTS

Schwabacher & Co. has been a member organization since March 1, 1930. In the past few years, they have conducted a diversified securities business from their main office in San Francisco, California, and 15 branch offices. Schwabacher & Co. has 33 general partners, 13 limited partners, 193 registered representatives, and 612 operational and other personnel. They handle approximately 24,260 active customers' accounts, of which 4,239 are margin accounts.

Mr. Albert E. Schwabacher, Jr. is a senior partner who during the last three years has been the firm's chief executive. The principal capital partners are Mr. Schwabacher, William M. Cahn, Jr. and Clarence E. Heller, whose interests in capital are 22.858%, 12.572% and 13.714%, respectively. Mr. Schwabacher in 1966 was also managing partner. Darrell J. Winrich was managing partner from mid September 1966 to the end of December 1967. Mr. Schwabacher was managing partner in the interim until March 8, 1968, when Richard W. Muir became the firm's managing partner.

Mr. Winrich's background was in security analysis. Mr. Muir's background was in sales management.

Mr. J. H. Moelter was employed by the firm in June 1967 and became a general partner on July 6, 1967, in charge of operations. Mr. Moelter was succeeded in operations management by Mr. R. L. Holvenstot in August 1968.

A February 1965 Exchange examiner's visit and an August 1965 audit showed no major operations problems. In January 1966, Schwabacher & Co. converted its bookkeeping operations to the Midwest Service Bureau's facilities. In April 1966 it was reported to the Exchange that the conversion was not as smooth as the firm would have liked it to be. It was learned late in October 1966, as the result of an audit, that short security differences were almost $14,000,000 indicating a substantial failure to keep accurate records. However, this figure was reduced within 4 days to about $4,500,000 and a week later to $3,700,000. Because of these differences, substantial capital was contributed to assure compliance with Exchange minimum capital requirements. As a result of the differences, there was also a substantial delay in completing the audit and returning answers to a regular financial questionnaire as of October 28, 1966. The answers were received March 3, 1967, which was 93 days following the original due date. They showed short securities differences amounting to $2,376,757. The audit also showed securities not properly segregated of $6,866,910.

Although special effort was made to correct past differences and eliminate the possibility of new ones being created, over the next

two years the changes in supervisory management, the acquisition of new operating personnel and assistance given by accounting firms failed to provide Schwabacher & Co. with reasonable control of the input of its business to assure current records which were in balance and reasonably accurate.

By way of illustration, an Examiner's visit in September 1967 resulted in a 65-page report of record keeping deficiencies, the longest ever produced as the result of an Examiner's visit. The report dealt with out-of-balance conditions, errors in submitting financial questionnaires, commingling of partner and customer securities in the firm's safekeeping box, excessive "edits" representing errors of input to the Midwest system, inadequate attention to customers' unsecured debits and short positions, inordinate delays in COD deliveries, payment of customers and laxity in transfer in cases of sales of non-negotiable securities, security count differences, under-segregation in margin accounts, failure to segregate fully paid for securities in cash accounts, deficiencies in accomplishing shipping instructions, delays in margin department release of transfer instructions and cage processing of transfer instructions and segregation instructions, unauthorized release of segregated securities, lack of control of excessive fails, unreconciled clearing house accounts and brokers accounts, a breakdown in new accounts procedures resulting in loss of control of commingling of customers securities without consent in bank loans, commingling of partners securities with customers in bank loans, unreconciled suspense accounts, and dividend department out of control.

Although reports by the firm to the Exchange thereafter indicated an improving condition, early reports from an audit by Hood and Strong as of August 30, 1968, indicated differently. Consequently, an Examiner was sent to the firm in November 1968. He found that there were approximately 31,000 "edits" indicating record-keeping errors which needed correction, that there were more than $7½ million of DK fails, that monthly fail figures reported to the Exchange were inaccurate by as much as $6 or $7 million, that dividend condition could not be determined, that control had been lost over a major bank account, that 10 suspense accounts of the New York office were out of control.

The answers to a financial questionnaire based upon an audit by Hood and Strong as of August 30, 1968, could not be submitted until November 20, and indicated that the firm's records were in far worse condition than had been known.

At or about the audit date it was thought that the short security differences were substantially less than eventually reported in the firm's financial questionnaire. An operations questionnaire received from the firm as of August 30, 1968, the audit date, showed long and short security differences of $4,883,633 and $2,942,851, respectively. The financial questionnaire as of the same date showed the market value of these differences to be $7,743,619 long and $7,103,251 short. The auditors did state in their report that many correcting entries have been made by employees of the firm which could not be taken into consideration by the auditors either because the adjustments could not be located, or if located not accepted, the entries were received

too late to be verified or made as of a date subsequent to the audit date. The auditors stated in their report that differences to a considerable extent were the result of the unsatisfactory condition of the accounting records and material inadequacies in the internal accounting controls.

Schwabacher & Co., as a result of its inability to handle its business on an operationally sound basis, was first placed on restriction by the Exchange in February 1968. The firm was restricted from increasing its registered representatives and offices and asked to reduce its volume, freeze the opening of new accounts, cease trading and reduce underwritings and advertising. Later a restriction was placed on the number of trades the firm could handle on a daily basis.

In late October 1968, the Exchange determined that the business of Schwabacher & Co. must be further reduced, and in early December placed a December 15 deadline for the firm's decision either to merge with another firm or sell a number of branch offices.

By that date, arrangements for a merger with Blair & Co., Inc. were completed, to be accomplished about March 1, 1969. Since mid-December, the operations of Schwabacher in San Francisco and New York have been under the effective supervision of executives of Blair & Co., Inc.

On several occasions during the past three years, Schwabacher & Co. has had short security differences which if charged against their net capital would have resulted in violations of Rule 325. However, it has been the practice of the Exchange instead to insist that a substantial cushion of excess net capital be maintained against short security differences, the amount determined in individual cases by the age of the

differences and related circumstances. It has been necessary on several occasions for the Exchange to require Schwabacher & Co. to raise substantial excess net capital in view of their short differences and they have done so.

The Department of Member Firms charges on the basis of the above Statement of Facts that:

(1) Schwabacher & Co. and its general partners violated Rule 440 and SEC Rule 17a-3 (books and records), Rule 402 and SEC Rule 8c-1 (segregation and hypothecation), Rule 342 (supervision and control), Rule 401 (good business practice), and Rule 417.11 (audits).

(2) Albert E. Schwabacher, Jr. violated Rule 342 (supervision and control) and was principally responsible for the firm's violations.

The firm and its general partners are subject to discipline under the provisions of Sections 6, 7, 10 and 16 of Article XIV of the Exchange Constitution.

Robert M. Bishop

NEW YORK STOCK EXCHANGE

April 3, 1969

TO: Board of Governors

FROM: Advisory Committee

SUBJECT: Disciplinary Charges against Schwabacher & Co. and Related Persons

The Advisory Committee has considered the staff memorandum dated March 27, 1969 and Offer of Settlement by Schwabacher & Co. dated March 24, 1969.

The Committee recommends to the Board of Governors that the firm and its general partners be found guilty of violating Rule 440 and SEC Rule 17a-3 (Books and Records); Rule 402 and SEC Rule 8c-1 (Segregation and Hypothecation); Rule 342 (Supervision and Control); Rule 401 (Good Business Practice); and Rule 417.11 (Audits).

The Committee recommends that the Board accept the firm's Offer of Settlement that the firm should be fined $50,000 for these violations; and Albert E. Schwabacher, Jr., as the senior general partner and chief executive, should be fined $25,000 and censured before a subsequent meeting of the Board of Governors, and is not to undertake any duties in supervision of operations of any member organization for five years without the prior approval of the Exchange.

For the information of the Board, the Committee also determined that Alfred Lisi, former partner in charge of operations, had violated Rule 342 (Supervision and Control) and should be censured before a subsequent meeting of the Advisory Committee and fined $1,000.

The Committee determined that no action be taken in connection with the charges against J. Henry Moelter, former partner in charge of operations; and Darrell J. Winrich, former managing partner.

April 10, 1969

Censure of Albert E. Schwabacher, Jr.

Mr. Schwabacher:

The Advisory Committee of the Board of Governors as well as this entire Board have carefully considered the disciplinary charges brought against you personally, as well as Schwabacher & Co. and its other general partners. The staff report of February 17, 1969 and the answer submitted in behalf of yourself, Schwabacher & Co. and its other general partners dated March 24, 1969 including the consent to penalty, have received our attention.

The condition of Schwabacher & Co.'s records throughout the period from early 1966 until it became a division of Blair & Co., Inc. was such that there can be no doubt violations of Exchange Rule 440 and SEC 17a-3 did occur. You and your former firm of Schwabacher & Co. have also agreed to the stipulation that Exchange Rules 342, 401, 402 and 417.11 as well as SEC Rule 8c-1 were violated.

We are sure you fully realize the seriousness of the situation that occured, but we wonder if you and your partners fully recognized throughout these three years of inadequate and inaccurate records the real jeopardy in which you placed your customers' interests and the possibility that the Exchange and its entire membership might also suffer as a result of Schwabacher & Co. having lost control of its affairs.

3448

Although it is recognized you personally and other partners of your firm endeavored in various ways by employment of additional capital, use of outside accounting assistance and changes in supervisory management to correct and eliminate the condition, the Exchange cannot and does not intend to condone inadequate and lax supervision of the affairs of its members.

For having violated the rules previously mentioned, Schwabacher & Co. is being fined $50,000.

You, Mr. Schwabacher, as senior partner and chief executive of your firm during the last three years, are considered to be primarily responsible for the condition having originated and continued for such a long period of time. We censure you for this and fine you personally $25,000.

As an added penalty, you may not accept without prior Exchange approval, any duties in supervision of back office operations of any member organization for at least five years.

We are aware that private proceedings have been taken against your firm by the Securities & Exchange Commission. The Securities & Exchange Commission will be notified of this proceeding.

Exhibit S

(Securities Exchange Act Release No. 8477)

ADMINISTRATIVE PROCEEDING
FILE NO. 3-1635

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
August 28, 1969

In the Matters of SCHWABACHER & CO. 100 Montgomery Street San Francisco, California (8-3913) ALBERT E. SCHWABACHER, JR. Securities Exchange Act of 1934 - Sections 15(b), 15A and 19(a)(3)	FINDINGS, OPINION AND ORDER

In these proceedings pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 ("Act"), an offer of settlement was submitted by Schwabacher & Co. ("registrant"), a partnership registered as a broker-dealer, and Albert E. Schwabacher, Jr., the senior general partner and chief executive of registrant. Under the terms of the offer, respondents waived a hearing and post-hearing procedures, and, without admitting the allegations of the order for proceedings, consented to findings of willful violations of the record-keeping, hypothecation, and reporting provisions of the Act and rules thereunder as alleged in such order. Respondents further consented to the entry of an order censuring them, prohibiting Schwabacher from undertaking certain supervisory functions, and imposing various terms and conditions. 1/

After due consideration of the offer of settlement and upon the recommendation of our staff, we have determined to accept such offer. On the basis of the order for proceedings, the offer of settlement, and certain materials attached to the offer, we make the findings set forth below.

Violations of Record-Keeping, Hypothecation, and Reporting Provisions

Between January 1, 1966 and July 11, 1968, when we issued our order for proceedings, registrant, willfully aided and abetted by Schwabacher, willfully violated Section 17(a) of the Act and Rule 17a-3 thereunder in that registrant failed to make or keep current a large

1/ Respondents' offer of settlement recited that no fact stated therein constitutes an admission by them in any other proceeding except to the extent that it may lawfully be considered by the Commission as to them in any subsequent administrative proceeding pursuant to Sections 15(b), 15A and 19(a)(3) of the Act and Section 203(d) of the Investment Advisers Act of 1940.

number of the books and records relating to its business. 2/ During the same period, registrant, willfully aided and abetted by Schwabacher, willfully violated Section 8(c) of the Act and Rule 8c-1(a)(2) thereunder in that it hypothecated and permitted the hypothecation of securities carried for the accounts of customers under circumstances permitting such securities to be commingled with securities carried for the accounts of persons other than bona fide customers under liens for loans made to registrant. In addition, registrant, willfully aided and abetted by Schwabacher, willfully violated Section 17(a) of the Act and Rule 17a-5 thereunder in that it failed to file timely reports of its financial condition for the years 1966 and 1967, and those reports, when filed, were not duly certified.

In January 1966, registrant converted its bookkeeping operations to the Midwest Service Bureau's computerized accounting system. In April 1966 it was reported to the New York Stock Exchange, of which registrant was a member, that the conversion was not as smooth as registrant would have liked. An audit by the Exchange disclosed in October 1966 that short security differences were almost $14,000,000, indicating a substantial failure to keep accurate records. This figure was reduced within about 11 days to $3,700,000 and substantial capital was contributed to assure compliance with the Exchange's minimum capital requirements. Because of the differences, completion of the audit was delayed and answers to a regular financial questionnaire were not received until March 1967 and showed differences of $2,376,757 and securities not properly segregated of $6,866,910.

Despite special efforts over the two next years to correct past differences and prevent new ones, there continued to be a failure to maintain current records that were in balance and reasonably accurate. Thus, an Exchange examiner who visited registrant in September 1967 submitted a report listing a large number of record-keeping deficiencies. 3/ A further examination by the Exchange in November 1968

2/ The books and records that were not made or maintained consisted of blotters or other records of original entry; records reflecting all assets and liabilities, income and expenses and capital accounts; records itemizing separately, as to each cash and margin account of customers and of registrant and its partners, all purchases, sales, receipts, and deliveries of securities and commodities for such account, and all other debits and credits; records reflecting securities in transfer, dividends and interest received, securities borrowed or loaned, monies borrowed or loaned and the collateral therefor, and securities failed to receive or deliver; a record reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by registrant for its account or for the account of its customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried; and records in respect of each cash and margin account containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner.

3/ The deficiencies consisted of out-of-balance conditions, errors in submitting financial questionnaires, commingling of partner and customer securities in registrant's safekeeping box and in bank

CONTINUED

disclosed approximately 31,000 record-keeping errors, more than $7½ million of fails, and inaccuracies by as much as $6 or $7 million in monthly fail figures reported to the Exchange. In addition, dividend condition could not be determined, record-keeping control over a major bank account had been lost, and ten suspense accounts in registrant's New York Office were similarly out of control.

Beginning in February 1968, the Exchange placed various restrictions on registrant because of its "inability to handle its business on an operationally sound basis." Additional restrictions were imposed at the suggestion of our staff in July and August 1968, and restraints were also voluntarily adopted by registrant in response to Exchange inquiries or to assure compliance with the restrictions. Included were prohibitions against the opening of new branch offices, advertising, and the conducting of investment classes, as well as restrictions on new registered representatives, new accounts, margin accounts and required margin, trading activity, underwriting originations, bidding commitments and participations, lending of securities, and partnership withdrawals.

In October 1968, the Exchange determined that registrant's business had to be further reduced, and in early December placed a December 15 deadline for registrant's decision either to merge with another firm or sell a number of branch offices. By that date, arrangements for a merger with Blair & Co., Inc., a registered broker-dealer, were completed, and since February 28, 1969, operations of registrant have been under the supervision of Blair executives. 4/ Pursuant to a settlement in April 1969 of disciplinary proceedings brought by the Exchange in which registrant and its general partners, for the purpose of settlement only, admitted violations of rules of the Exchange and this Commission with respect to books and records, segregation and hypothecation, supervision and control, good business practice, and

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3 Continued/

loans, excessive "edits," representing errors disclosed by the Midwest system's computer, inadequate attention to customers' unsecured debits and short positions, inordinate delays in COD deliveries and payment of customers, laxity in transfer in cases of sales of non-negotiable securities, security count differences, undersegregation in margin accounts, failure to segregate fully paid-for securities in cash accounts, deficiencies in accomplishing shipping instructions, delays in margin department release of transfer instructions and cage processing of transfer instructions and segregation instructions, unauthorized release of segregated securities, lack of control of excessive fails, unreconciled clearing house accounts and broker accounts, a breakdown in new accounts procedures resulting in loss of control of commingling of customer securities without consent in bank loans, unreconciled suspense accounts, and loss of control of the dividend department.

4/ At about that time, according to the Exchange, registrant had 15 branch offices, 33 general partners, 13 limited partners, 193 registered representatives, 612 operational and other personnel, and approximately 24,260 active customers' accounts, of which 4,239 were margin accounts.

On May 6, 1969 the Exchange determined, on the basis of improvements in operation conditions of registrant, to modify the restriction against approval of new registered representatives and to rescind the restriction on underwriting activities.

audits, registrant was fined $50,000, and Schwabacher was fined $25,000 and censured. In addition, Schwabacher agreed that he would not undertake any supervisory duties with respect to back-office operations of any Exchange member for five years without prior approval of the Exchange.

Public Interest

A firm's obligation to investors to conduct its securities business on a sound basis requires that it be sensitive to any back-office problem as soon as it arises, and take prompt and effective steps to bring itself into compliance with applicable rules and, if necessary to prevent further delinquencies, to curtail activities not essential to providing service to existing customers. The maintenance of the back-office mechanisms and their relation to the firm's overall operations must be the subject of constant close attention, in order to insure that customers' interests are being served and protected. A failure to effect prompt handling of all record and delivery requirements not only imposes substantial risks on the firm's own customers but also on those of the broker-dealers with whom its transactions are entered into. It tends to have a chain effect which can compound the delays and risk of injury and adversely affect investor confidence in the securities market. The increasingly severe restrictions imposed to correct registrant's continuing back-office deficiencies, even to the extent of requiring the firm either to merge with another firm better prepared to deal with them or to reduce the number of its branch offices, reflect the serious concern with which such deficiencies are viewed and the importance of a broker-dealer firm's recognition of the full magnitude of the problem.

The offer of settlement in the instant proceedings provides that we may censure respondents; require registrant, as a division of Blair, to continue making its weekly report of condition to our San Francisco Regional Office and to the Exchange (such reports may be consolidated); continue the existing restrictions upon registrant; 5/ reserve the right to reinstitute these proceedings, upon five days' written notice, in the event of a breach by registrant of any of such restrictions which has not been corrected within the notice period, provided that the occurrence of the breach shall be an issue to be determined at a hearing; and prohibit Schwabacher from undertaking any duties with respect to supervision of back-office operations of any broker-dealer without prior Commission approval. The offer further states that while Schwabacher, for the year beginning March 1, 1959, may be a vice-president of Blair, as one of 12 or 13 members of its Corporate Finance Department, his duties would not be of a supervisory nature. 6/

5/ Registrant or Blair may apply to us at any time for removal or modification of the restrictions. Respondents represent that while the restrictions were of material assistance in the resolution of the operational difficulties which resulted in the instant proceedings, they believe that such restrictions are no longer necessary.

6/ Respondents represented it was their understanding that Blair, as registrant's successor, would make appropriate representations or undertakings to the Commission necessary to continue the jurisdiction of the Commission with respect to registrant, including undertakings requiring the submission of weekly reports and permitting the reinstitution of proceedings in the event that the operations or books and records of the Schwabacher division of Blair materially deteriorate. Blair has submitted a statement to the Commission in conformance with respondents' understanding.

Respondents urgedin mitigation that registrant's accounting problems began with its conversion in January 1966 to the Midwest system during a period of unprecedented increases in the volume of market activity, and were compounded by the difficulty in locating and engaging competent operations personnel experienced in that system; that in December 1968, six of registrant's partners obtained a bank loan of $3 million which they loaned to registrant as new capital on a subordinated basis; and that the acquisition of registrant by Blair resulted in the loss of registrant's independence and autonomy and terminated a 50-year-old firm that had played a responsible financial role in the West. They further stated that the totals of fails to deliver and fails to receive have shown substantial improvement over the last seven months; 7/ that progress has been made in the suspense account arising from the August 30, 1968 audit; 8/ that the cashier department has been completely reorganized and, among other things, processes customer complaints on a current basis; that the number of Midwest system "edits," reflecting both current errors and historical errors which have not been completely corrected, has shown improvement over the past several months; 9/ and that control of current operations has been achieved by implementing procedures which monitor problem areas and by taking action to correct any errors thus revealed. 10/

Under all the circumstances, including the disciplinary action already taken against respondents by the Exchange, and giving due consideration to the recommendations of our staff, we think it appropriate in the public interest to dispose of the proceedings in accordance with the offer submitted and impose the sanctions permitted by such offer.

7/ Fails to deliver were $28,665,000 for the week ending August 30, 1968, compared to $7,106,000 for the week ending April 3, 1969. The corresponding figures for fails to receive were $18,096,000 and $7,532,000.

8/ Suspense items were long $9,578,000 and short $8,580,000 for the week ending September 13, 1968, compared to $1,681,771 long and $1,040,311 short for the week ending April 3, 1969.

9/ There were 30,153 "edits" for the week ending October 18, 1968, compared to 15,340 "edits" for the week ending April 3, 1969. Registrant, acknowledging that "edits" should number less than 10,000 per week, states that in view of certain projects that are planned, reductions in the number of "edits" are expected to continue.

10/ Cited by respondents as among the most significant of the programs installed to assure current control of operations are a procedure assuring the current balance and control of trading activities on all exchanges and the over-the-counter market; the daily processing of the basic "edits" used to maintain control of cash and securities entries to the computer records; a weekly box count of all securities in the active box in both the San Francisco and New York offices; and a daily reconciliation of bank balances in both the cashier's and the accounting department's records.

Accordingly, IT IS ORDERED that Respondents be and they hereby are, censured, that Albert W. Schwabacher, Jr. be, and he hereby is, prohibited from undertaking any supervisory duties with respect to back-office operations of any broker-dealer without prior approval of the Commission, and that the other terms and conditions specified in the offer of settlement be, and they hereby are, imposed.

By the Commission (Chairman BUDGE and Commissioners OWENS, WHEAT and SMITH), Commissioner NEEDHAM not participating.

Orval L. DuBois
Secretary

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THE WALL STREET JOURNAL

August 29, 1969

Schwabacher Censured By SEC; Chief Barred From Some Operations

Action Against Firm, Now Held by Blair & Co., Based on Findings Of Violations From 1966 to 1968

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — The Securities and Exchange Commission censured Schwabacher & Co., and prohibited Albert W. Schwabacher Jr., its chief executive, from supervising back-office operations of any broker-dealer without commission approval.

The SEC said the censure is based on findings that between January 1966 and July 1968 the San Francisco broker-dealer violated Federal securities law by failing to keep accurate records.

Schwabacher & Co. was acquired earlier this year by Blair & Co., at the urging of the New York Stock Exchange, after Schwabacher became mired in back-office problems.

The SEC said Schwabacher consented to the censure and to the findings without admitting the allegations. The censure was included in a settlement offered by Schwabacher and accepted by the SEC.

The commission's order followed a series of earlier actions by the Big Board to restrict Schwabacher's operations. The exchange, in February 1968, said the restrictions were necessary because of the firm's "inability to handle its business on an operationally sound basis."

In December 1968, the exchange ordered Schwabacher to merge with another firm or to sell a number of its branch offices. Blair & Co., New York, acquired Schwabacher in February 1969, and Schwabacher has been under Blair's supervision since that time.

In April 1969 the exchange fined Schwabacher & Co. $20,000; Mr. Schwabacher was fined $25,000, censured, and ordered not to supervise back-office operations of any exchange member for five years without prior approval of the exchange.

The SEC said Schwabacher agreed to the disciplinary settlement and, for the purpose of settlement only, admitted to violations of the rules of the exchange and the SEC with respect to the failure to keep accurate records and a lack of adequate supervision and control over back-office operations.

Cleaning Up the Problem

In New York, a spokesman for Blair & Co. said more than 50% of Schwabacher's back-office problems have been "cleaned up." These problems, he added, involve fails to deliver stock and missing records on specific stock trades.

"We have a team of its accountants and auditors working on the problems and should be current at Schwabacher before the end of the year," the spokesman said.

In San Francisco, a spokesman for Schwabacher said the problems leading to SEC action were committed "unintentionally and inadvertently" and were the type that many other brokerage firms are experiencing.

Mr. Schwabacher was reported on a wilderness pack trip into Wyoming and Montana and isn't expected back until the end of next week.

The Blair spokesman said that Mr. Schwabacher is currently a Blair stockholder and a member of Blair's new business department, handling underwritings and offerings "but isn't involved in back-office operations in any way." Mr. Schwabacher, formerly managing partner of Schwabacher & Co., is now a senior vice president for Blair.

The SEC said that in January 1968 Schwabacher converted its bookkeeping operations to a computerized accounting system. In April 1968 the firm advised the exchange that the transition hadn't gone smoothly.

An audit of the firm's books in October 1968 disclosed that the firm couldn't account for the custody of securities it was owed by and supposed to collect from customers and other brokerage firms, the SEC said. The commission said this indicated a substantial failure to keep records.

The commission also charged that the firm wrongfully pledged customers' securities as collateral for loans from banks.

According to the SEC, Mr. Schwabacher "willfully aided and abetted" the firm in its alleged violations.

Despite special efforts over the next two years to correct past differences and prevent new ones, the SEC said, the firm still failed to maintain current records.

According to the SEC, Schwabacher said its conversion to computerized accounting came at a time of sharp increases in the volume of market activity, and that it had made substantial efforts to correct its deficiencies.

Weekly Reports Required

In addition to censuring Schwabacher, the commission said it will require the firm, as a division of Blair, to continue to make weekly reports of its financial condition to the commission's San Francisco regional office. The commission's order also prohibits Mr. Schwabacher from assuming supervisory duties at Blair.

Blair's acquisition of Schwabacher gave Blair 13 branches on the West Coast. However, Blair closed four of the offices last week in an effort to eliminate unprofitable or marginally profitable branches.

A Blair official said the 11 branches still operate under the Schwabacher name, although Blair plans to place them under its name soon.

The exchange and the commission arranged Schwabacher's aftercare by Blair in order to protect Schwabacher's customers. In its order the SEC stressed the importance of preventing back-office problems, which may "adversely affect investor confidence in the securities market."

Exhibit T

258

March 28, 1969

PLS EXHIBIT 107
WITNESS BISHOP
REPORTER A&M
DATE 1-9-75

Mr. Albert E. Schwabacher, Jr.
Schwabacher & Co.
100 Montgomery Street
San Francisco, California 94104

Dear Al:

We appreciate the detailed report in your letter of March 20.

Although the change in type and reduction in volume of advertising reported in that letter are in the right direction it seems to us that it could be and should be further reduced. Equal attention should be given to reducing other forms of promotion.

We cannot consent to the net increase of 37 registered representatives to which you feel committed. Please have that last revision back to us with such arrangements may be cancelled or deferred and present producers who might be terminated. If the net increase is not reduced to below 25, please consider whether you may not have branch offices which might be sold.

If any of your operations personnel are registered, please discontinue permitting them to service customer accounts and assign their accounts to a full-time registered representative. The objective is to devote full operations manpower to their primary job. We would have no objection to some commission credit being given to men whose accounts are so reassigned.

You are currently completing a special operations questionnaire. A similar report should be made to the Exchange at the end of each month, due not later than the 10th, and supplemented by a letter describing progress made which is not shown in the questionnaire. The current questionnaire and

your letter of March 20 will fulfill this requirement for March.

Enclosed is a special letter which will be required in connection with any new capital contributors or renewals of capital from others than members and allied members during the duration of the special restrictions. Please bear in mind that I have authority to approve capital contributors without the usual posting period in emergency cases where it is necessary to meet capital requirements.

I am also expecting to receive a letter explaining your plans for continuing your business in the event that daily average volume exceeds 1700 trades during a week. I am enclosing a list of ideas for this purpose.

/s/ ROBERT M. BISHOP

Robert M. Bishop
Vice President

Enclosures

jmd

William M. Cahn, Jr.
cc: R.W. Haack

Date_____

New York Stock Exchange
11 Wall Street
New York, New York 10005

PLS EXHIBIT 112
WITNESS BISHOP
REPORTER RFM
DATE 1-7-75

Attention: Department of Member Firms -
Division of Finance

Gentlemen:

Accepting the suggestion of the New York Stock Exchange, I have conducted such investigation of Schwabacher & Co. (the "Firm") and of its participants as I consider desirable, appropriate and necessary under the circumstances and I have been furnished with all financial information with respect to the Firm as I have requested, including the latest certified audit by _____ dated _____ and a recent computation of net capital prepared by the Firm as of _____. (Insert "A") is not being made in reliance upon the Firm's standing as a member organization or the New York Stock Exchange or on the Exchange's surveillance of the capital position of the Firm.

*I am familiar with the fact that the New York Stock Exchange has placed restrictions upon the Firm as set forth in its letter of _____.

*I am (also) familiar with the fact that an audit of the Firm has been in process since _____ and that answers to a financial questionnaire based upon this audit have not been submitted to the Exchange.

I agree that the New York Stock Exchange has no responsibility to disclose to me information concerning the Firm which it may now have or at any time in the future may have or to protect my interest in the member organization, and I will hold harmless the New York Stock Exchange, its Special Trust Fund and each governor, officer, trustee or employee of said Exchange or Fund for any claim with respect thereto.

Very truly yours,

_____

Insert A where applicable -

My limited capital contribution

or

My subordinated loan to the firm dated _____

*These paragraphs used if appropriate.

Caf

June 25, 1968

Schwabacher & Co.
100 Montgomery Street
San Francisco, Calif.

Attention: Mr. A. E. Schwabacher, Jr.

Gentlemen:

We have your letter of June 3rd inquiring about the necessity of furnishing us with a certain letter in connection with Jacob Gould Schurman's $75,000 "capital" borrowing from the Bank of California.

Please be advised that the form of letter enclosed with Mr. Robert M. Bishop's letter of March 28th was intended to apply to all contributors of capital. Therefore, a copy of this letter will be required in Mr. Schurman's case.

Very truly yours,

Division of Finance

By JPV
John P. Videtti

JPVidetti:mb

cc: Mr. William M. Cahn, Jr.
New York City

7/8/68 ✓ 7/8/68 + 7/3/68

Exhibit U

364

Date_____

New York Stock Exchange
11 Wall Street
New York, New York 10005

Attention: Department of Member Firms -
Division of Finance

PLG EXHIBIT 113
WITNESS BISHOP
REPORTER GRIM
DATE 1-7-75

Gentlemen:

Accepting the suggestion of the New York Stock Exchange, I have conducted such investigation of Blair & Co., Inc. (the "Corporation") and of its participants as I consider desirable, appropriate and necessary under the circumstances, and I am aware of and am fully informed with respect to the proposed investment by the Corporation into Schwabacher & Co. My subordinated loan to the Corporation dated _____ is not being made in reliance upon the standing as a member organization of the New York Stock Exchange of either the Corporation or Schwabacher & Co. or on the Exchange's surveillance of the capital position of the Corporation or Schwabacher & Co.

I am familiar with the fact that the New York Stock Exchange has placed restrictions upon Schwabacher & Co. as set forth in its letters of [illegible] 7/23/74.

I agree that the New York Stock Exchange has no responsibility to disclose to me information concerning the Corporation or Schwabacher & Co. which it may now have or at any time in the future may have or to protect my interest in the Corporation, and I will hold harmless the New York Stock Exchange, its Special Trust Fund and each

[illegible]

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governor, officer, trustee or employee of said Exchange or Fund for any claim with respect to the matters referred to herin.

Very truly yours,

Exhibit V

May 6, 1969

Mr. James B. Ramsey, Jr., President
Blair & Co., Inc.
20 Broad Street
New York, New York 10004

PLFF EXHIBIT 174
WITNESS BISHOP
REPORTER CSM
DATE 1-7-75

Dear Mr. Ramsey:

This is to confirm the determinations made at a meeting held on May 6, 1969, with Mr. Benjamin H. Hepburn, Mr. Raymond Holvenstot, and Mr. Joseph Daley of counsel. As you know, the purpose of this meeting was to discuss the current operation conditions of the Schwabacher Division of Blair & Co., Inc. and to consider whether some modification should be made in the operating restrictions imposed by the Exchange. Based on the information provided by Mr. Holvenstot indicating improvement in operation conditions, the following determinations were made:

1. The restriction against approval of new registered representatives is modified to the extent that we will not object to your hiring sufficient registered personnel to raise the quota of 179 as of April 30, 1969, to 188, the quota on March 1, 1968.

2. The restriction on underwriting activities is rescinded completely.

All other restrictions will remain in full force and effect until such time as we feel the status of the operations of the Schwabacher Division is such as to warrant further modification.

Sincerely,

/s/ ROBERT M. BISHOP
Robert M. Bishop
Vice President

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cc: Mr. Joseph Daley
JJDelgnan/mvn

MEMORANDUM

09/13

September 4, 1969

SCHWABACHER & CO. - DIVISION OF BLAIR & CO., INC.

At the present time Schwabacher Division is subject to the following restrictions:

1. 1700 trades per day
2. Promotion of advertising restricted
3. Firm trading limited
4. Operations personnel not to service accounts
5. Acceptance of orders under restricted conditions

On May 6, 1969, we modified the restriction on approval of new registered representatives to the extent that the total number of registered representatives would not exceed 188, the quota on March 1, 1968. This permitted the firm to engage a total of 9 additional registered representatives. The restriction on underwriting activities was rescinded completely. We rules that all other restrictions would remain in full force and effect until such time as we felt that the operations of the Schwabacher Division warranted further modification.

The last Operations Questionnaire submitted by the Schwabacher Division as of July 25, 1969, indicated continued improvement. For example, suspense account items reached a high of 86 with a ledger debit of $1,443,000, and long values of $1,720,000 have now been reduced to two items with long value of $1,335. Non-current dividend items number 305 with ledger debit of $336,163 and market value of shorts totaling $565,000. This compares with 8500 open items as of July 26, 1968, a high debit of $969,000 on August 30, 1968, and high short values of $1,867,000 on October 25, 1968. Stock Record differences are minimal, numbering only 14 with short values of $11,350 as of July 25, 1969.

It would appear from the foregoing that the operations problems of the Schwabacher Division have been substantially solved and there appears to be no reason why our restrictions should not be modified significantly or in some cases removed completely. However, we must also consider the operations status of Blair & Co., Inc. Relevant information is in a separate memorandum.

JJD

mvn

September 8, 1969

Joseph C. Daley, Esq.
Hudge, Rose, Guthrie & Alexander
20 Broad Street
New York, New York 10005

Dear Mr. Daley:

This is to advise you that in accordance with your request in behalf of the Schwabacher Division of Blair & Co., Inc., the Exchange has modified or removed the following restrictions as indicated:

1. The quota of registered representatives which now stands at 188 may be increased to 204 during the next 6 months. At the end of that period we will consider further increases in the quota based on the conditions which then prevail.

2. The 18 issues in which you are now making markets may be increased by 10 additional issues.

3. You will be permitted to advertise but we expect that it will be on a conservative basis. Please submit advance copies so that we may get a better idea of the nature of the advertising you propose.

4. There will be no objection to your accepting orders in stocks selling under $5 per share.

Sincerely,

/s/ ROBERT M. BISHOP

Robert M. Bishop
Vice President

JJDeitman/mvn

cc: [illegible] ALLEN

Exhibit W

ARTHUR YOUNG & COMPANY

277 PARK AVENUE
NEW YORK, N. Y. 10017

May 7, 1969

Mr. Robert M. Bishop, Vice President
New York Stock Exchange
11 Wall Street
New York, New York 10005

Dear Sir:

This letter is in response to Mr. Lloyd McChesney's suggestion that we set forth in writing our plans for conducting the 1969 surprise examinations of Blair & Co., Inc. and Schwabacher & Co. (now Schwabacher Division of Blair & Co., Inc.)

Our schedule calls for the Schwabacher & Co. examination to commence as of the end of June 1969 and the Blair & Co., Inc. examination as of the end of September 1969.

As you know, the Schwabacher firm has experienced very severe operating problems and while it is our understanding that important improvements have been made in day to day operating capabilities as well as reductions in error backlogs, considerable work remains to be done. We have been approached by management to assist with this work by expanding the scope of our "surprise examination" to include an extraordinarily comprehensive review and evaluation of operating procedures and controls, together with recommendations for improvements and other changes. We have also been asked to lay out a plan complete with mechanical detail and a step by step time table for the consolidation of operations of the two firms.

In recognition of the expanded scope of the work we have been asked to do and the importance of its meaningful and timely accomplishment to the Blair and Schwabacher people, as well as to the investment community as a whole, we feel it can best be done by handling the Schwabacher work separately at the time mentioned above.

This schedule (June and September) will allow us to assign our very best and most experienced people from several of our offices (Chicago, New York and San Francisco) to the Schwabacher

ARTHUR YOUNG & COMPANY

Mr. Robert M. Bishop

May 7, 1969

engagement. Inasmuch as we do not enjoy complete flexibility with respect to experienced personnel, any other schedule would be less favorable. Furthermore, this schedule will permit Blair & Co., Inc. to assign certain of its top back office personnel to assist with the Schwabacher engagement.

It is our understanding that there are no significant intercompany dealings and accounts and that the firms are using distinct clearing designations. This situation would also seem to facilitate a "separate entity" examination.

The only significant problem we can anticipate relates to a 1969 statement of financial condition for the combined entity. While combining figures of separate entities at different dates is generally accepted and commonly done for industrial and other companies, Stock Exchange rules pertaining to member firm reporting may require special interpretation for this purpose. We believe, however, that statement presentation of and our reports on the Blair and Schwabacher entities combined can be constructed so that they will give a clear and concise presentation of the relevant financial information.

In summary, we think our approach to these engagements as outlined above is the most convenient and economical to all parties concerned and we are convinced, in light of our capabilities and flexibilities, as well as those of Blair and Schwabacher, that it will accommodate the best and most timely conclusion. We have considered but have dismissed for reasons of cost and disruption to the firms' business, other approaches, including a repeat audit of Schwabacher coincidental with Blair's.

We would appreciate receiving your concurrence on these matters at your earliest convenience. Should you need any additional information, we would be pleased to furnish it.

Yours very truly,

ARTHUR YOUNG & COMPANY

by W. N. Olson

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NEW YORK STOCK EXCHANGE

MEMORANDUM

May 19, 1969

PLS EXHIBIT 175
WITNESS BISHOP
REPORTER O'D.M
DATE 1-7-75

TO: Mr. Robert M. Bishop

FROM: L. W. McChesney

SUBJECT: Arthur Young & Company Request for Separate Audits of Schwabacher & Co. and Blair & Co. Inc.

Arthur Young & Company, in a letter dated May 7, requested separate audits for two parts of Blair & Co. - Schwabacher & Co. to be conducted in June and Blair & Co. in September. In this request, AY stated that there are no significant inter-company dealings. AY & Co. believes that the overall audit of the firm in this manner will produce a better result than would a single audit of the entire entity at one time. The basic theory behind this is that a better utilization of personnel of both AY & Co. and the operations management and personnel of Blair & Co. would result.

In earlier conversations with Walter Olsen, Partner of AY, I indicated that at a minimum, the Exchange would require that a separate Special Financial Questionnaire be answered at the same time the audits were being conducted for the separate divisions. Also, that the answers be combined by AY to show total answers for the entire entity of Blair & Co.

For background information, AY completed a total of 34 audits of member firms in 1968 and has contracted for 29 audits in 1969. The decrease in audits of member firms is primarily in New York which dropped from 17 to 12. This decrease was the responsibility of AY & Co.'s policy of not undertaking more work than they believed their staff was capable of handling in a professional manner. In talking with Walter Olsen last night, the following information was developed:

1. Under the proposed review of operations at Schwabacher in June combined with the audit, AY & Co. is to evaluate existing management and procedures.

2. As a part of and immediately following this evaluation, AY is to make a detailed plan for combining the operations of Schwabacher and Blair. The development of this plan would perhaps take three to five months.

3. The present thinking is that the combining of operations would take place over a period of 18 to 24 months and would be accomplished on a branch-by-branch basis. All records would eventually be centered in New York. It is possible that the first branch conversion would take place in November and December and be completed by the end of December 1969.

4. The audit of Blair & Co. in 1968 required about 6,000 man-hours and billing was approximately $90,000 (these figures are from Mr. Olsen's memory and he was not able to refer to his specific records when I was talking with him).

5. The AY staff did consider the possibility of combining the audits of Blair & Co. and Schwabacher in June. In the best judgement of the partners of AY, the highly questionable condition of records at Schwabacher which contain a large number of long-standing differences, could conceivably result in an unsatisfactory report for the entire firm.

6. The big concern expressed by AY was the presentation of a 1969 statement of financial condition for the combined entity. This does not seem a major problem to me since the statement could be shown on a combining basis, that is, by showing three sets of figures, the audit portion, the unaudited division and the total. The accountant's certificate would relate to the audited portion.

I am sympathetic to the reasoning of AY & Co. However, the basic problem appears to me to be that AY & Co. appears unable to supply adequate numbers of experienced personnel to undertake a combined audit. In my discussions with Mr. Olsen and with one of his partners, I became convinced that the firm is anxious to undertake the work required by Blair & Co. and wants to do a conscientious and competent job. An argument for allowing this type of audit which would be an exception to NYSE policies and rules is that at this late date, it is highly questionable whether any other public accounting firm could assemble enough experienced personnel to complete a thorough examination of the combined firm in 1969.

We must also consider that should the NYSE grant approval to this request under its own rules, AY & Co. would still be required to obtain approval from the SEC for an exception to its audit requirements. Should the Exchange desire to accommodate the AY request, it would be advisable to discuss this with the proper authorities at the SEC prior to advising AY of the NYSE decision.

The planning of this audit will take quite some time and Mr. Olsen has requested an early reply to his request. He is available for a visit to the Exchange should it be deemed desirable to discuss this proposal with him.

Lloyd W. McCrary

LWMcC/cmr

cc: F. J. Stock, Jr.
M. M. Frankhauser
L. E. Waterbury
G. Beliakow

NEW YORK STOCK EXCHANGE

MEMORANDUM

May 23, 1969

TO: Mr. Robert M. Bishop

FROM: L. W. McChesney

SUBJECT: Blair & Co. 1969 Audit

Mr. Andrew Barr of the S.E.C. advised that the Commission will not take exception to the conducting of separate audits of the two Divisions of Blair & Co. in 1969.

Mr. Barr had conferred with Messrs. Pollack, Sporkin and Mallard prior to rendering this decision. He will also alert the San Francisco and New York regional offices to not take exception to this reporting procedure.

Lloyd McChesney

LWMcC/cmr

cc: F. S. Stock, Jr.
J. J. Deignan
G. Beliskow

Exhibit X

BLAIR & Co., INC.
20 BROAD STREET
NEW YORK, N.Y. 10005

Cable Address
OCBLAIR NEWYORK
Telephone
DI 4-4000

Members
New York Stock Exchange
American Stock Exchange
Midwest Stock Exchange

August 28, 1969

New York Stock Exchange
Department of Member Firms
4 New York Plaza
New York, N.Y. 10005

Stock Purchase Plan for Employees of Blair & Co., Inc.

Attention: Mr. W.G. Carr

Dear Sirs:

The Stock Purchase Plan of Blair & Co. Inc., under which eligible employees from time to time subscribe for shares of our capital stock, has been in effect since 1963. Currently 91 officers and other employees are subscribers under the Plan.

The present provisions of Section 7, relating to the termination and cancellation of subscriptions, frequently produce undesirable results, particularly in the case of an employee who subscribes at a price which is substantially higher than the book value of the stock when his subscription terminates. Accordingly, the Executive Committee of our Board of Directors proposes to amend Section 7 so as to eliminate the necessity of adjustments based upon changes in book value between the time of making of the subscription and its termination.

A copy of the Stock Purchase Plan marked to indicate the proposed change in Section 7 is enclosed for your consideration.

It is hereby requested that the Exchange approve the proposed amendment. We shall look forward to hearing from you after you have had an opportunity to examine the enclosure.

Very truly yours,
BLAIR & CO., INC.
By

James J. Rush
James J. Rush,
Vice President

JR:sf
Enc.

BLAIR & CO., INC.

STOCK PURCHASE PLAN

ELIGIBILITY

1. No person shall be eligible to participate in this Stock Purchase Plan (the "Plan") or purchase shares pursuant to any stock subscription entered into hereunder, unless the contemplated purchase of shares by such person has been approved by those exchanges, boards of trade, clearing corporations or similar institutions on which the Corporation has membership privileges whose approval of a holder of shares is required.

NUMBER OF SHARES, PURCHASE PRICE, AND TERMS OF PAYMENT

2. The number of shares which may be purchased, the subscription price payable therefor, and the manner of payment of the subscription price, shall be as set forth in a Subscription Agreement in substantially the form attached. Any subscriber may at any time prepay all or any part of the unpaid balance of the subscription price, with interest accrued to the date of such prepayment. There shall be credited against the unpaid balance of the subscription price (in inverse order of maturity of installments due thereon) an amount equal to each dividend paid per share on each class of capital stock of the Corporation, multiplied by the number of shares, respectively, of each such class subscribed for but which have not been issued prior to the record date for such dividend. In the event that dividends are paid in property other than cash or capital stock of the Corporation, the amount of such dividend for purposes of this paragraph 2 shall be the fair value thereof as determined by the Board of Directors, irrespective of the accounting treatment thereof, and the determination of the Board of Directors shall be conclusive.

INTEREST

3. Each subscriber agrees to pay interest at the rate of five per cent per annum on the unpaid principal amount of the subscription price. Such interest shall be computed on the last day of each month and shall be paid on the following day.

ISSUANCE OF STOCK CERTIFICATES

4. Certificates representing shares of capital stock of the Corporation shall be issued from time to time to subscribers upon receipt by the Corporation of payment in full pursuant to the Subscription Agreement for a unit consisting of four shares of _____ Voting Common Stock and one share of $4 Preferred Stock, and no shares of capital stock shall be issued pursuant to the Plan or any Subscription Agreement except in such units. Each payment by a subscriber shall be applied toward the purchase solely of such entire units. To the extent that such units have not been paid for in full thereunder, the Subscription Agreement shall constitute an executory contract to sell and not a present contract of sale, and no interest in the shares subscribed for, or any of them, shall vest in the subscriber prior to actual issue of stock certificates therefor, and the subscriber shall not have any rights as a stockholder with respect to any shares until issue of stock certificates therefor.

TRANSFERABILITY

5. No subscriber shall assign or transfer his subscription to any other person. Certificates representing shares of capital stock issued hereunder may be transferred only to the extent and in the manner provided in the Agreement of Merger of the Corporation and subject to the approval of those exchanges, boards of trade, clearing corporations or similar institutions on which the Corporation has membership privileges whose approval of a holder of such shares is required.

MODIFICATION OR REDUCTION OF SUBSCRIPTION

6. If at any time before final payment of a subscription a subscriber states in writing to the Corporation that he is unable to make the payments as provided for in the Subscription Agreement, the Board of Directors may in its discretion modify the terms of payment in any manner which it may deem appropriate, including cancellation of the subscription for shares not theretofore paid for, without further liability of the subscriber.

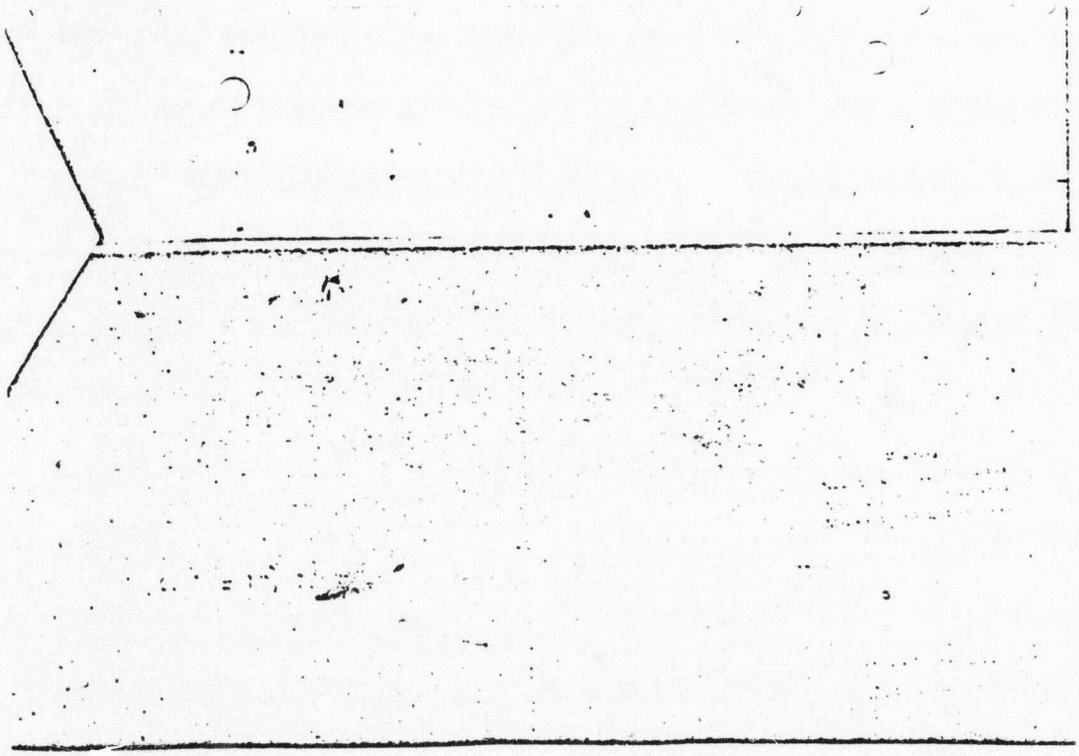
RIDER A

CANCELLATION OF SUBSCRIPTION

7. In the event that at any time before final payment of a subscription a subscriber shall not be entitled to purchase shares pursuant to his subscription, or in the event of the death of the subscriber, or the subscriber ceasing to be an officer or employee of the Corporation, the Subscription Agreement shall terminate and the Corporation shall pay to the subscriber or, in the event of his death or incompetency, to his legal representative, an amount in cash or in securities listed on a national securities exchange, in such proportions as the Corporation may determine, equal to the excess, if any, of: (a) the book value of the shares which the subscriber has agreed to purchase under the Subscription Agreement but which have not theretofore been paid for in full, over (b) the unpaid balance, including accrued interest, of the aggregate purchase price of such number of shares. In the event of any such termination of the Subscription Agreement, the subscriber or, in the event of his death or incompetency, his legal representatives, shall pay to the Corporation the excess, if any, of: (a) the unpaid balance including accrued interest, of the aggregate purchase price of the shares which the subscriber has agreed to purchase under the Subscription Agreement but which have not theretofore been paid for in full, over (b) the book value of such number of shares. The book value of the shares for all purposes of this Section 7 shall be determined in accordance with Section 3A.3(d) of the Agreement of Merger of the Corporation, as of the same date as the book value of shares owned by the subscriber is determined for purposes of Article 5 of the Agreement of Merger, or if no such determination is made, then as of the last day of the month preceding termination of the Subscription Agreement. Payments made in securities shall be made in accordance with Section 5C.3 of the Agreement of Merger.

CHANGES IN SHARES

8. In the event that the outstanding shares of the capital stock of the Corporation are increased or decreased or changed into or exchanged for a different number or kind of shares or other securities of the Corporation or of another corporation, through reorganization, merger, consolidation, liquidation, recapitalization, reclassification, stock split-up, combination of shares or dividends payable in capital stock of the Corporation, appropriate adjustment in the number and kind of shares which may be purchased under the Subscription Agreement shall be made to the end that the proportionate number of shares not theretofore purchased under the Subscription Agreement shall be maintained as before the occurrence of any such event. The adjustment shall be made without change in the unpaid balance of the subscription price and with a corresponding adjustment in the subscription price per share; provided, however, that nothing herein shall obligate the Corporation to issue any fractional shares.



Rider "A" - Stock Purchase Plan

an amount equal to any payments theretofore made by the subscriber to the extent that such payments in the aggregate do not constitute payment in full for an entire unit of stock in accordance with the provisions of Section 4 of the Stock Purchase Plan.

CORP
DD

September 12, 1969

Blair & Co. Incorporated
20 Broad Street
New York, New York 10005

Attention: Mr. James J. Lush

Gentlemen:

This is to acknowledge receipt of your letter of August 28, 1969 to which was attached a copy of your company's stock purchase plan.

The provisions of the proposed amendment to this plan which you also included with your letter are satisfactory from the standpoint of the Exchange.

Thank you for your prompt attention to this matter.

Very truly yours,

Division of Documents

By_____
Dennis Dirks

DDirks:at

Exhibit Y

TO THE BOARD OF GOVERNO... – NEW YORK STOCK EXCHANGE Hold for FG

NAME OF RESPONDENT ORGANIZATION		COMBINED REPORT OF ALL OFFICES OF RESPONDENT ORGANIZATION FOR THE MONTH ENDED 12/31/69
1. BLAIR & CO., INC.	DLFI EXHIBIT 220 WITNESS Bisher REPORTER CRM DATE 1-8-75	LAST PREVIOUS REPORT DATE:

		Current Report	Last Previous Report
1	Summarize the results of the latest computation made of the Ratio of Aggregate Indebtedness to Net Capital in accordance with Rule 325.		
	A. Date as of which computation was made	12/31/69	11/30/69
	B. Amount of Aggregate Indebtedness	$ 119,713,000	$ 110,738,759
	C. Amount of Net Worth (excluding Subordinated Borrowings)	$	$
	D. Net Value of Securities in Proprietary accounts	$ 6,696,225	$ 7,005,661
	E. Amount of Subordinated Borrowings	$ 3,045,084	$ 4,314,097
	F. Net Value of Securities in Subordinated Accounts	$ 22,203,374	$ 23,024,485
	G. Amount of Net Capital	$ 4,478,915 *	$ 7,037,949
	H. Ratio of Aggregate Indebtedness to Net Capital	2,673 * %	1,569 %
	I. Amount of Net Capital in Excess of (or Less than) Minimum Requirements	$ (1,907,135) *	$ 1,521,011

After Net Capital charge of $3,000,000 for receivable due from Schwabacher & Co. acquired firm; in addition, both aggregate indebtedness and capital charges have been seriously inflated as a result o conversion to the Mid-West System.

2	Furnish the following information as of the date shown in answer to question 1A above:		
	A. Unresolved stock record difference positions with no known related ledger amounts:		
	1. Total number thereof	NONE	-
	2. Total LONG market value thereof	$ -	$ -
	3. Total SHORT market value thereof	$ -	$ -
	4. Were the LONG values ignored in the capital computation summarized in answer to question 1?	YES X NO ☐	YES ☐ NO ☐
	5. Were the SHORT values charged to capital in the capital computation summarized in answer to question 1?	YES X NO ☐	YES ☐ NO ☐
	B. Ledger amounts comprising SUSPENSE ITEMS and/or DIFFERENCE AMOUNTS with no known related securities positions		
	1. Total number of such SUSPENSE ITEMS and DIFFERENCE AMOUNTS	245	-
	2. Total of such ledger DEBIT amounts	$ 293,000	$ -
	3. Total of such ledger CREDIT amounts	$ 283,000	$ -
	4. Were these amounts considered in the capital computation summarized in answer to question 1?	YES X NO ☐	YES ☐ NO ☐

NAME OF RESPONDENT ORGANIZATION	COMBINED REPORT OF ALL OFFICES OF RESPONDENT ORGANIZATION FOR THE MONTH ENDED 12/31/69
BLAIR & CO., INC.	LAST PREVIOUS REPORT DATE:

2		Current Report	Last Previous Report
	C. Ledger amounts comprising SUSPENSE ITEMS with known related securities positions:		
	1. Total number of such SUSPENSE ITEMS	117	-
	2. Total of such ledger DEBIT amounts	$ 1,014,788.29	$ -
	3. Total of such ledger CREDIT amounts	$ NONE	$ -
	4. Total market value of LONG securities positions related to SUSPENSE ITEMS	$ 1,014,788.29	$ -
	5. Total market value of SHORT securities positions related to SUSPENSE ITEMS	$ NONE	$ -
	6. Were these balances and market values considered in the capital computation summarized in answer to question 1?	YES ☐ NO ☒	YES ☐ NO ☐
	D. Dividends, rights and similar distributions receivable outstanding 30 days and longer:		
	1. Total ledger amounts of such distributions receivable in cash	$ 449,700.80	$ -
	2. Total market value of such distributions receivable in stock, rights, etc.	$ 725,562.00	$ -
	3. Were the total ledger amounts and market values charged to capital in the computation summarized in answer to question 1?	YES ☒ NO ☐	YES ☐ NO ☐

NOTES: 1 SUSPENSE ITEMS represent unidentified or identifiable transactions which have not been charged up in the normal course of business. They may have known related LONG or SHORT securities positions.

2 DIFFERENCE AMOUNTS represent currently unidentifiable items and may have been requested to balance daily general ledger activity. They have no known related LONG or SHORT securities positions.

3	Furnish the information requested with respect to counts made since the last previous Special Operations Questionnaire was filed:	Current Report				
		Date	Per Cent of Total Positions Counted	Number of Unresolved Differences	Market Value of Unresolved Differences	
					Long	Short
	A. Securities: *					
	1. Securities in active box		%		$	$
	2. All other securities recorded as being in physical possession		%		$	$
	3. Open transfer items counted and compared to stock record		%		$	$
	* Not available at this time	Last Previous Report				
	A. Securities:					
	1. Securities in active box		%		$	$
	2. All other securities recorded as being in physical possession		%		$	$
	3. Open transfer items counted and compared to stock record		%		$	$

NAME OF RESPONDENT ORGANIZATION	COMBINED REPORT OF ALL OFFICES OF RESPONDENT ORGANIZATION FOR THE MONTH ENDED: 12/31/69
BLAIR & CO., INC.	LAST PREVIOUS REPORT DATE:

4	Furnish the information called for with respect to the latest proofs taken of the following accounts:	Current Report			
		Date	Totals of Detail Records	Balances in Control Accounts	Differences
	A. Customer accounts		$ Unavailable	$	$
	B. Fail to receive	12-31-69	$ 20,750,000.00	$ Unavailable	$ Unavailable
	C. Fail to deliver	12-31-69	$ 19,820,000.00	$ Unavailable	$ Unavailable
	D. Stocks borrowed	12-31-69	$ 1,550,000.00	$ Unavailable	$ Unavailable
	E. Stocks loaned	12-31-69	$ 1,532,000.00	$ Unavailable	$ Unavailable
		Last Previous Report			
	A. Customer accounts		$	$	$
	B. Fail to receive		$	$	$
	C. Fail to deliver		$	$	$
	D. Stocks borrowed		$	$	$
	E. Stocks loaned		$	$	$

NOTE: DETAIL RECORDS consist of the supporting documents and or ledgers which support the balances recorded in related general ledger control accounts. For example, the detail records supporting the general ledger customer control account are the customer ledgers and those supporting the general ledger fail control accounts are the fail items maintained in the Cage and related EDP tape or card files.

5	Furnish the following information as of month end:	Current Report	Last Previous Report
	A. Number of securities positions with unresolved stock record breaks	250	59
	B. Total market value of unresolved STOCK RECORD BREAKS:		
	1. LONG	$ 1,037,090	$ 1,807,055.70
	2. SHORT	$ 889,196	$ 223,204.60

NOTE: STOCK RECORD BREAKS refer to out of balance securities conditions on the stock record which are created by the daily recording of securities movements.

NAME OF RESPONDENT ORGANIZATION	COMBINED REPORT OF ALL OFFICES OF RESPONDENT ORGANIZATION FOR THE MONTH ENDED 12/31/69
BLAIR & CO., INC.	LAST PREVIOUS REPORT DATE:

6 Furnish the information requested with respect to reconciliations performed in connection with the following items since the last previous Special Operations Questionnaire was filed

	Current Report				
	Date	% of Total Positions Confirmed & Reconciled	Number of Unresolved Differences	Market Value of Unresolved Differences	
				Long	Short
A. Collateral items confirmed with banks and compared to stock record	11-24	100 %	None	$	$
B. Securities recorded as deposited with CCS and compared to the CCS Clearing Member Statement	11-24	100 %	None	$	$
C. Fails to deliver confirmed and compared to stock record	11-24	100 %	None	$	$
D. Fails to receive confirmed and compared to stock record	11-24	100 %	None	$	$
E. Stocks borrowed confirmed and compared to stock record	9-26	100 %	None	$	$
F. Stocks loaned confirmed and compared to stock record	9-26	100 %	None	$	$
	Last Previous Report				
A. Collateral items confirmed with banks and compared to stock record		%		$	$
B. Securities recorded as deposited with CCS and compared to the CCS Clearing Member Statement		%		$	$
C. Fails to deliver confirmed and compared to stock record		%		$	$
D. Fails to receive confirmed and compared to stock record		%		$	$
E. Stocks borrowed confirmed and compared to stock record		%		$	$
F. Stocks loaned confirmed and compared to stock record		%		$	$

7

	Current Report	Last Previous Report
A. Furnish the following information on unsecured accounts of customers at month-end.		
1. Total number of accounts	894	278
2. Total ledger DEBIT balances	$ 874,985.56	$ 224,599.68
3. Total market value of SHORT securities positions	$ 422,562.00	$ 159,363.00
B. Furnish the following information on unsecured accounts of brokers at month end		
1. Total number of accounts	25	4
2. Total ledger DEBIT balances	$ 5,358.45	$ 953.70
3. Total market value of SHORT securities positions	$ 284,621.00	$ 203,452

NAME OF RESPONDENT ORGANIZATION	COMBINED REPORT OF ALL OFFICES OF RESPONDENT ORGANIZATION FOR THE MONTH ENDED 12/31/6
BLAIR & CO., INC.	LAST PREVIOUS REPORT DATE:

		Current Report	Last Previous Report
8	Furnish the following information on bank accounts and related bank statements:		
	A. Latest date, prior to the report date, as of which ALL bank accounts had been reconciled	11/30/69	10/30/69
	B. Total amount of unidentified reconciling items which could eventually require adjustment of respondent's profit and loss accounts as:		
	1. DEBITS	$ -0-	$ -0-
	2. CREDITS	$ -0-	$ -0-
	NOTE: DEBIT and CREDIT amounts applicable to unidentified reconciling items should be shown separately. They should NOT be netted and shown as a single amount		

9	With respect to clearing arrangements:		
	A. If the respondent clears through other brokerage organizations, state		
	1. Latest date, prior to the report date, to which omnibus accounts carried for the respondent by clearing brokers had been reconciled	-	-
	2. Total amount of unresolved reconciling items:		
	(a) DEBITS	$ -	$ -
	(b) CREDITS	$ -	$ -
	3. Total market value of unresolved reconciling items		
	(a) LONG	$ -	$ -
	(b) SHORT	$ -	$ -
	B. If the respondent clears for other brokerage organizations, state the number thereof		

VI

NAME OF RESPONDENT ORGANIZATION	COMBINED REPORT OF ALL OFFICES OF RESPONDENT ORGANIZATION FOR THE MONTH ENDED 12/31/09
BLAIR & CO., INC.	LAST PREVIOUS REPORT DATE:

		Current Report	Last Previous Report
9 cont.	With respect to clearing arrangements:		
	C. If the respondent clears through the Stock Clearing Corporation's direct mail clearance facilities, state *		
	1. Latest date, prior to report date, to which the omnibus account carried for the respondent by the Stock Clearing Corporation had been reconciled		
	2. Total amount of unresolved reconciling items:		
	(a) DEBITS	$ -	$ -
	(b) CREDITS	$ -	$ -
	3. Total market value of unresolved reconciling items:		
	(a) LONG	$ -	$ -
	(b) SHORT	$ -	$ -
	NOTE: DEBIT and CREDIT amounts and LONG and SHORT market value totals due to unresolved reconciling items should each be shown separately		

10	State the average number of TRADES executed per trading day of the month for customers, other brokers and the respondent in each of the following markets:		
	A. New York Stock Exchange	513	-
	B. All other securities exchanges	652	-
	C. Over the Counter	320	-
	D. Other:	160	-
		1,645	1,829
	Totals		

NOTES: 1. TRADES consist of the buying and selling activities under taken for customers, other brokers and the respondent's proprietary accounts, which result in the issuance of confirmations and/or which require clearance or other settlement activities on the part of the respondent. Transactions clearing or settled for correspondents should be included in determining the average number of trades per day for the purchase (or sale) of, say, 500 shares executed as 200 shares at 25 and 300 shares at 25¼, should be considered as two trades.

2. If the information as requested in this question will present a distorted representation of the respondent's business, the "Other" category may be classified into significant components such as Underwritings, Secondary clearances, Correspondents clearances, and so forth.

3. Transactions included in the "Other" category (10 D) should be excluded from the computation of New York Stock Exchange, All other securities exchanges, and Over the Counter.

* Not Applicable

NAME OF RESPONDENT ORGANIZATION	REPORT OF ALL OFFICES OF RESPONDENT ORGANIZATION FOR THE MONTH ENDED 12/31/0
BLAIR & CO., INC.	LAST PREVIOUS REPORT DATE:

		Current Report	Last Previous Report
11	State the average number, per trading day of the month:		
	A. Of UNCOMPARED TRADES and ADVISORY TRADES	164	-
	B. Of corrected or cancelled trades (If a correction and a cancellation apply to the same trade, include them as a single item only)	122	-

NOTES: 1 An UNCOMPARED TRADE is one for which is reflected differently on the respondent's blotter than on the contra broker's blotter as revealed by contract sheets in the case of clearing house transactions or (ii) for which the contra broker OK's the respondent's broker comparison or for which the respondent OK's the contra broker's comparison, in the case of Over the Counter transactions

2 An ADVISORY TRADE is one which is reflected on the contra broker's blotter only, and not on the respondent's blotter, as revealed by contract sheets, in the case of clearing house transactions

12	State the number, over 30 days old at month end, of open transfer items		
	A. Being transferred by the respondent's organization	4,023	-
	B. Being transferred by other brokerage organizations for the respondent	none	-
	C. Being transferred by the Stock Clearing Corporation's direct mail clearance facilities for the respondent	none	-
13	State the number, more than 30 days old at month end, of open instructions to deliver customer securities. (Include transfer instructions not yet matched with securities and sent to transfer agents as well as other types of instructions which have not been delivered.)	4,217	-
14	Estimate the average per day of the month, for the following *		
	A. Securities delivered to other brokers returned unaccepted (DK's)		
	1. Number of items		
	2. Percentage of such items to total items presented to brokers for delivery	%	%
	B. Securities delivered against payment to banks returned unaccepted		
	1. Number of items		
	2. Percentage of such items to total items presented to banks for delivery	%	%

NOTE: With respect to securities delivered to other brokers through clearinghouses each deliver balance order should be considered as an individual item in determining the base for estimating the average percentage of unaccepted items delivered to total items delivered.

* Not Applicable at this time

BLAIR & Co., INC.

CO [illegible] REPORT OF ALL OFFICES OF RESPONDENT ORGANIZATION FOR THE MONTH ENDED 12/31/0.

LAST PREVIOUS REPORT DATE

		Current Report	Last Previous Report
15	State the number of calendar days after the month end or other cutoff date required for the preparation and mailing of customer statements	13	10
16	State the latest date prior to the report date for which internal FINANCIAL STATEMENTS had been issued to capital contributors	10-31-69	-
	NOTE FINANCIAL STATEMENTS include, as a minimum, a Statement of Income or Loss and a Statement of Financial Position		
17	State the number of business days after the end of the month required to complete the normal daily posting of the following:		
	A. General ledger	#	-
	B. Customer and broker accounts	#	-
	C. Stock record	#	-
	D. Margin records	#	-

An outside service automatically does the posting for the above daily.

18	A	State the number, at month end, of PRODUCING PERSONNEL (Those who devote less than the full trading day to production work should be included on an equivalent basis, e.g., ½, ¼, etc.)	463	463
	B.	State the number, at month end, of personnel undergoing Registered Representative training	-	-
	C	State the total number of operations personnel employed in the Wire and Order, Purchases and Sales, Cashiering, Stock Record, Margin, Dividends, Accounting and Data Processing departments	556	570
	D.	State the number of personnel on your full time internal audit staff	2	2
	E.	Is an outside service bureau used for daily recordkeeping activities?	YES X NO [ ]	YES X NO [ ]
	F.	State the approximate number of operations personnel who are attending formal operations training courses at the present time		
		1. Internal courses	NONE	-
		2. External courses	NONE	-
	NOTE	PRODUCING PERSONNEL, for the purpose of this questionnaire, represents those, including supervisors or officers, who execute orders or execute trades		

NAME OF RESPONDENT ORGANIZATION	COMBINED REPORT OF ALL OFFICES OF RESPONDENT ORGANIZATION FOR THE MONTH ENDED 12/31/59
BLAIR & CO., INC.	LAST PREVIOUS REPORT DATE:

		Current Report
19	A. Attach a statement identifying any major organization or system changes (for example, introduction or expansion of internal audit staff, long range planning staff, etc., conversion to computer or service bureau systems) instituted since filing the latest Financial Operations Questionnaire. Include similar changes now being planned for implementation within the next 6 months and not previously reported. Provide details regarding reasons for each change and target dates for the start and completion of each change.	☐ Statement Attached ☒ Not Applicable
	B. Attach a statement giving brief progress reports on all previously reported changes now in progress, or completed or abandoned since the last previous report.	☐ Statement Attached ☒ Not Applicable

		Current Report	Last Previous Report
20	Furnish the following fiscal year-to-date information as reported in the latest internal financial statements:		
	A. Cumulative net profit (loss) applicable to the current fiscal year	$ (6,397,343)	$ -
	B. Number of fiscal months to which the cumulative net profit (loss) applies	11	-

NAME OF RESPONDENT ORGANIZATION BLAIR & CO., INC.

SIGNED BY James A. Ramsey Jr.
(CHIEF EXECUTIVE)

AND Raymond Haber, Asst. Vice President
(MEMBER OR ALLIED MEMBER IN CHARGE OF OPERATIONS)
By James J. Rand V.P.

DATE 2/6/1960

ALL QUESTIONS MUST BE ANSWERED. STATE "NONE" OR "NOT APPLICABLE," AS APPROPRIATE, IF THERE IS NOTHING TO REPORT IN RESPONSE TO A PARTICULAR QUESTION.

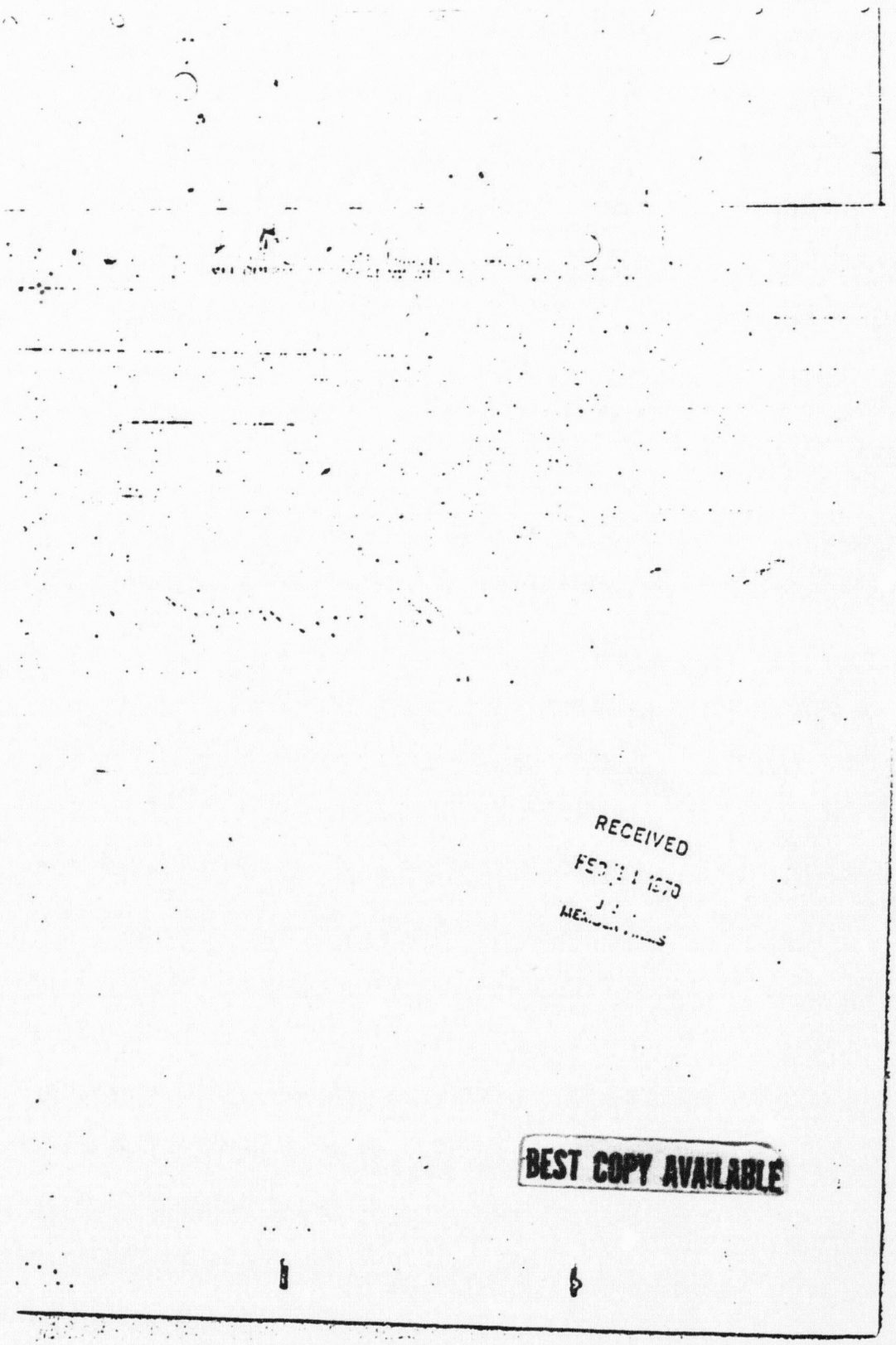


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Exhibit Z

396

March 16, 1970

Mr. James S. Ramsey Jr.
Blair & Co., Inc.
20 Broad Street
New York, New York 10005

PLG EXHIBIT 189
WITNESS BISHOP
REPORTER SRM
DATE 1-9-75

Dear Mr. Ramsey:

There has been recently brought to my attention, a capital position of Blair & Co., Inc. as of January 31, 1970 computed by an Exchange examiner and based on information taken from the records of the firm. This computation indicates a capital deficiency of approximately $7,500,000 and a ratio of aggregate indebtedness to net capital as 38 87. The figures were not checked back to the detailed records and I fully recognize that the deficiency indicated is not a reliable figure and may be more or less, depending upon further refinements of the basic information. However, until such time as a more reliable figure can be computed, I feel it is essential that Blair & Co. take immediate steps to inject new capital to the extent of not less than $7,500,000. Please let me know as soon as this has been accomplished.

Sincerely,

JJDelgman:hb

Robert M. Bishop
Vice President

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MEMORANDUM

April 14, 1970

BLAIR & CO., INC. - STATUS REPORT

PLG EXHIBIT 194
WITNESS BISHOP
REPORTER GBM
DATE 1-7-75

As of February 28, 1970, Blair & Co. had a capital deficiency of $4,600,000. based on computations made by the firm. This information was brought to our attention on April 6, 1970. We did have some earlier information which indicated a lower deficiency of about $3,000,000. based upon which we informed the firm that if it did not cure this deficiency by Friday, April 3, we would expect liquidation of collateral underlying Secured Demand Notes of members and allied members of the firm. This liquidation actually commenced on Tuesday, April 7, and by April 9, $2,942,000 of additional capital had been released. On the following day, April 10, an additional $500,000 was released by further liquidation.

In addition to the liquidations referred to above, the firm negotiated a loan from John P. Foley, Jr. in the amount of $2,000,000. capital value. The documentation is now under study by Exchange counsel and indications are that with minor changes, this documentation will be satisfactory to us.

The firm also sold one of its Exchange memberships on April 9, 1970 for $280,000.

The net effect of the foregoing capital raising activities - including the Foley loan - results in an indicated adjusted capital position as follows:

Aggregate Indebtedness	$10[illegible],404,388.00
Net Capital	6,817,601.00
Required	5,170,219.00
Excess	1,647,382.00
Ratio	1519%

The firm is in the process of computing its capital position as of March 31, 1970 and it is anticipated that these figures will be available to us in the near future.

JJO

MEMORANDUM

BLAIR & CO., INC.

PIG EXHIBIT 197
WITNESS Bissell
REPORTER AM
DATE 1-7-75

April 28, 1970

Today at 10:30 a.m., Messrs. Vanderbilt, Ramsey and Morpurgo of Blair & Co., Inc. met with Messrs. Cunningham, Arning and Deignan of the Exchange. The purpose of the meeting was to discuss the Blair situation and the plans of the firm to improve it's position. The following is a summary of the points covered.

Morpurgo used several charts showing his projections of the firm's profit and loss for the next year. In summary, the firm will not reach a break even point until February 1971. At the present rate of loss, accumulated loss by that date will be in the neighborhood of $3,500,000. Currently the firm is experiencing a loss of about $800,000 per month. However, it is expected that there will be monthly improvements so that in about four months the loss will be cut to about $200,000 per month and will be reduced gradually thereafter. Some of the costs reduced involves the proposed move of the back office operations to New Jersey which is scheduled for the first week in June.

With respect to the effect of the surcharge, it is anticipated that this will improve the firm's income to the extent of about $200,000 per month. This is based on 1500 tickets per day with an average surcharge of $10 applying to about 1,000 tickets.

Currently, the firm has excess net capital of about $500,000 but based on present loss projections it appears that there will be a capital violation before the end of this month. However, Mr. Morpurgo said additional collateral underlying Secured Demand Notes has been liquidated releasing $600,000 and it is anticipated that $500,000 of capital will be released before the end of the month through resolution of differences.

The next point discussed had to do with steps contemplated by the firm to improve its capital on a long term basis. Mr. Vanderbilt indicated that he was making efforts to raise $1,500,000 through the pledging of some Systems Capital stock which he holds. Thus far no real progress has been made. Reference was also made to the possibility of a financial organization supplying $10,000,000 in exchange for a 20% interest in Blair & Co., Inc. Here too, no real progress appears to have been made. In response to a question put by Mr. Cunningham, the representatives of the firm had no knowledge of whether a tax refund could be retained as a result of the firm's losses in 1969. However, they indicated that this angle will be pursued promptly.

With respect to expense control the firm's representatives seem a bit vague but indicated that some tightening up was being effected each day. In this connection it was stated that the officers' salaries have already been cut on two occasions on a voluntary basis for the most part. Efforts are also being made to dispose of several branch offices. Ramsey stated he is scheduled to begin meeting with division heads at 4 p.m. today at which time he will stress the need for retrenchment.

Throughout the meeting and most forcefully at the end, Mr. Cunningham indicated that the firm should begin outlining steps to accomplish a balancing of its income and expense by the end of May 1970. He directed that such a program should be developed in one week at which time another meeting will be scheduled to discuss the feasibility of following these steps. He also emphasized the need for the firm meeting capital requirements at all times and working down to a 1500% ratio as soon as possible.

JJD:

4000

NEW YORK STOCK EXCHANGE

11 WALL STREET
NEW YORK, N. Y. 10005

LEE D. ARNING
VICE PRESIDENT

April 28, 1970

Mr. James B. Ramsey, Jr.
President
Blair & Co., Inc.
20 Broad Street
New York, N. Y. 10005

PIC EXHIBIT 198
WITNESS RICHOT
REPORTER GRUM
DATE 1-7-72

Dear Jim:

We appreciated the opportunity to meet with you, Ollie and George today to discuss the affairs of Blair & Co., Inc.

In summarizing the results of our meeting, it seems to me that two things stand out:

1. That the forecast for continued operating losses will result in a serious impairment of the firm's capital and

2. That an immediate effort is essential to bring the present operating costs into line with existing revenues.

We all recognize that there are some unique characteristics to the firm's present problems -- notably, the impact of the conversion and the planned physical move to suburban New Jersey. We are prepared to meet with you to go over the plan you will present that will bring into focus the steps necessary to result in revenues and expenses, at least approximating each other, by June 1, 1970.

If you will let me know when your plan is ready and you and your associates are in a position to discuss it, I will arrange for a prompt meeting.

Sincerely,

(SIGNED) LEE D. ARNING

cc: Mr. John J. Deignan <—— THIS COPY

LDA/yjf

NEW YORK STOCK EXCHANGE

MEMORANDUM

May 13, 1970

TO: WM D. ARMING

FROM: FRED J. STOCK, JR.

SUBJECT: Blair & Co., Inc. and F. I. duPont & Co.

PSE EXHIBIT 199
WITNESS Stock
REPORTER
DATE

I have recently had discussions with Paul Chenet, the Coordinator for F. I. duPont & Co., and John Deignan, the Coordinator for Blair & Co., Inc., regarding the possible merger of these two member organizations. It is our opinion that the consolidation of these two firms, at this time, is not advisable. There are several reasons for our feeling this way which I will try to briefly summarize, but which I think we should discuss in detail.

The first reason is the poor capital condition of both of these member organizations. While it is possible that there could be a substantial infusion of capital to this combined member firm, based on comments by Mr. Edmond duPont that capital is available for a profitable firm with the right business mix, we have no assurances that there will be an infusion of capital.

The second reason is, naturally, the substantial operating losses of both of these organizations. While it is true that both firms are taking steps to bring their income and expense in line, a consolidation of the two firms would entail considerable added expense and experience has shown that in a merger the gross revenue of the two firms operating independently is greater than the gross revenue of the consolidated firm.

The third reason is that we do not feel the management of duPont has really been completely tested. While we feel that Sam Gay has done an excellent job in the operations area, we are not convinced that the overall management problems of duPont have been solved.

The fourth and by many ways major reason, is the condition of the records of Blair & Co., Inc. The firm has estimated that it will take between six months and a year to resolve the differences that presently exist. This means that there could not be a rapid or effective transfer of customer accounts from Blair to duPont. While both firms would have the computer facilities to do machine transfers, all they would be accomplishing is moving the errors that presently exist on Blair & Co.'s records on to duPont's records. Our experience has also shown that after any merger the number of errors in the records are far greater since, in many respects, we are facing the same problems you do in a conversion to a new Data Processing System.

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402

The operation would be further complicated by people who are becoming familiar with Blair's present system having to learn a new system all over again.

The fifth consideration is that the very sensitive indicator of customer complaints shows that duPont is still #1 and Blair & Co., Inc. is No. 2. Having such a merger, complaints usually rise and we are afraid that the volume of customer complaints on this combined firm would be astronomical.

The sixth consideration that we should go into detail on is what economies could be realized by merging these firms, what offices could be consolidated, what the terms of leases are in the various offices as well as the new New Jersey operations office of Blair & Co., Inc., etc.

The above are basic reasons for opposing this merger, at this time. While this may be a very logical combination of the member organizations, it would appear inadvisable until such time as Blair's current conversion problems are resolved and we have a further resolution of duPont's previous operational difficulties.

cc: R. M. Bishop

PIG EXHIBIT 201
WITNESS BISHOP
REPORTER GPM
DATE 1-7-75

June 15, 1970

TO: R. M. Bishop, L. D. Arning, R. J. Cunningham

FROM: Fred J. Stock, Jr.

RE: Conversations with the SEC on Blair & Co., Inc.

On June 11, 1970 FJS spoke with Mr. Charles Hartman of the Commission staff regarding Blair & Co., Inc. At that time Mr. Hartman was advised that the proposal submitted by Blair & Co which included a transfer of an excess of $2,000,000 to Thomson & McKinnon was unacceptable to the Exchange. Mr. Hartman was advised that the Exchange would have further conversations with Blair & Co., regarding their future business activities. We advised Mr. Hartman we would keep him informed as there were further developments.

On June 12, FJS spoke with Mr. Lerner of the Commission staff regarding Blair & Co. Mr. Lerner had noticed an article in Friday's Wall St. Journal regarding the merger conversations with Thomson & McKinnon and wondered whether this newspaper article or the report given to Mr. Hartman the previous afternoon was accurate. I advised Mr. Lerner that the Exchange had not changed their position, that we would not permit capital withdrawal from Blair & Co. and that further negotiations with Thomson & McKinnon and additional fact finding by the Exchange were underway so that we could determine the appropriate course of action early next week. Later in the day on June 12, Lee Arning and F. Stock spoke with Mr. Kevin Duffy, of the New York Regional office, advising him that the Blair proposal had been found unacceptable and advising him also that we were continuing to gather information on this organization while they and Thomson & McKinnon explored the feasibility of adding capital from outside sources in order to make this acquisition possible.

On Monday morning, June 15 FJS spoke with Charles Hartman and M. Simkin of the Washington D. C. office of the SEC and advised them that we were going to hold a meeting with representatives of major stock exchange firms to discuss their interest in acquiring all of or substantial segments of Blair & Co., Inc. I told these gentlemen that we would expect to have bids from whichever firms are interested within 48 hours. Mr. Simkin tried to pin down the exact time on which Blair & Co. would go into liquidation. I replied to this that I said it would be quite difficult to establish a precise moment , that in fact, the firm is presently in liquidation and during the course of the next few days we are determining what method will be employed to liquidate this firm. Mr. Simkin stated that they would present this information to the Commission for whatever course of action they may take. I requested

that Mr. Simkin advise us immediately of any decision reached by the Commission and he said that he would not guarantee that they would keep us informed and he would relay my request to Mr. Sporkin and we left the matter at that. Approximately one hour later, we learned by Mr. Joe Daly, counsel with Blair & Co., that the Commission had requested them to withdraw their underwriting syndicate in which they were scheduled to be a part on June 16.

At approximately 3:10 June 15, 1970 FJS spoke with Mr. Stanley Sporkin of the Washington office of the SEC and brought him up-to-date on the Blair situation. It was indicated that representatives of 7 firms had met with the member firm staff and representatives of Blair regarding the acquisition of all or substantial segments of Blair & Co. It is further advised that there is some interest in acquiring of branches and that we would reconvene with representatives of these firms at 4 p.m. to proceed in this matter. Immediately after speaking with Mr. Sporkin I tried to reach Mr. Duffy of the SEC in New York office but he was not in. I spoke with his assistant Mr. Charles Moran and advised him of the same information that I gave Mr. Sporkin.

cc: W. Freyer
J. J. Deignan

405

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES ARNEIL; VERNON A. STOCKWELL, Plaintiffs,	:	
v.	:	No. 75 CIV 1766
JAMES B. RAMSEY, JR., et al., Defendants.	:	

AFFIDAVIT OF J. THOMAS HANNAN

J. Thomas Hannan, being first duly sworn, deposes and says:

1. That he is one of the attorneys of record for the plaintiffs in the above action and that he makes this Affidavit in opposition to the motions of the defendants for summary judgment and pursuant to rule 56(f) of the Federal Rules of Civil Procedure.

2. That if called to testify as to the matters set forth herein, he would be competent to do so.

3. That he conducted the examination of Robert M. Bishop in deposition upon oral examination on January 6 through 8, 1975. That subsequent thereto, he has read and reviewed three affidavits submitted by Mr. Bishop in Carr v. New York Stock Exchange, U.S.D.C. N.D. Cal. No. C-73-0367 SW.

4. That he has in addition, reviewed the Affidavit of Robert M. Bishop sumbitted and which he recently received in connection with the motion for Summary Judgment filed by defendant New York Stock Exchange in this action and that he cannot fully respond thereto without full cross-examination of Mr. Bishop.

5. That objections were interposed to vital questions of Mr. Bishop in his deposition taken in Carr v. N.Y.S.E., which is now the subject matter of a motion to compel further testimony

from Mr. Bishop, particularly in those areas as to which objections have been imposed by his same counsel representing him in this action, Edward J. Reilly, he is unable to fully refute certain of Mr Bishop's statements made in the Affidavit filed in this action.

7. Appended hereto as Exhibits 5,6,7,14,20,21 and 24 are copies of documents pertinent to this matter which he did not have knowledge of at the time Mr. Bishop was deposed.

8. Appended hereto as Exhibits 1 through 3 are true copies of documents filed in Carr v. Blair, U.S.D.C. N.D. Cal. Civ. No. 71-1085 SC, relating to the stay of proceedings with respect to Blair & Co., Inc.

9. That attached hereto as Exhibit 4 is a copy of papers relating to the bankruptcy of Blair & Co., Inc., served upon the plaintiffs in this action by the law firm of Weil, Gotshal & Manges, appearing on behalf of Blair & Co., Inc.

10. Appended hereto as Exhibits 8,9,10,11,12,13,15,17 and 18 are true copies of documents obtained from the files of the New York Stock Exchange pursuant to a request for document production. #25

11. The named plaintiffs in Carr v. N.Y.S.E., and Carr v. Blair, who purchased securities of Blair at or about the same time as plaintiffs herein were residents of California and Minnesota.

12. The facts set forth in the complaint in this action come largely from the records and files of the New York Stock Exchange and Blair which were obtained through the process of document production. Insofar as he is aware, the only public disclosure of the essential facts prior to the production of documents came from a book entitled Wall Street: Security Risk by Hurd Baruch (a former SEC staff attorney) and a book entitled Fleecing the Lambs by Christopher Elias, a former New York Stock Exchange employee. A copy of pertinent material is attached hereto as Exhibit

J. THOMAS HANNAN

Subscribed and sworn to
before me this 5th day of January, 1976.

Norma G. Hilton
NOTARY PUBLIC FOR THE STATE OF CALIFORNIA

OFFICIAL SEAL
NORMA G. HILTON
NOTARY PUBLIC - CALIFORNIA
SAN FRANCISCO COUNTY
MY COMM. EXPIRES FEB 5 1979

LITIGATION DEPT.
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DIARY
REGISTER
EXAMINED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

JAMES ARNEIL; VERNON A. STOCKWELL, :

Plaintiffs, :

v. : No. 75 CIV 1766

JAMES B. RAMSEY, JR., et al., :

Defendants. :

- x

STATEMENT OF MATERIAL FACTS

AS TO WHICH THERE IS GENUINE DISPUTE

Pursuant to Rule 9g of the General Rules of the United States District Court for the Southern District of New York, plaintiffs set forth their statement of material facts in dispute with respect to the motions for summary judgment filed by the defendants:

1. Prior to and since 1969 plaintiffs have maintained securities accounts with Thomas McNeil in the State of New York with the firms of E. F. Hutton & Co., Reynolds & Co., Blair & Co., Evans & Co., and others (Arneil deposition at 21-27, Exhibit 1 to Arneil deposition and Exhibit 31).

2. Plaintiffs conducted business in the aforesaid securities accounts in the State of New York, by and through their registered representative Thomas McNeil (Arneil deposition at 20-37, Stockwell deposition at 8).

3. James Arneil is a co-owner with Vernon Stockwell of two apple orchards, but did not represent Mr. Stockwell as an attorney with respect to this transaction nor has he represented Mr. Stockwell in any other respect than preparing a will 10 to 15 years ago (Arneil deposition at 22 -24).

4. Messrs. Stockwell and Arneil arranged the applications to purchase Blair securities with Benjamin P. Hepburn, the Secretary of Blair & Co., Inc., who represented himself to be an agent of the President and Management of Blair (which includes defendants Lendman, Ramsey and Vanderbilt) (Arneil deposition at 56 - 59, 69, 82).

5. Agreements were not effectively executed by plaintiffs with respect to the transactions in suit in the State of Washington, they were rather signed in blank in the State of Washington and forwarded to New York for the insertion of the pertinent information and for approval which was a precondition to the effectiveness of the applications in the State of New York (Arneil deposition at 5 - 7; Stockwell deposition at 6).

6. Plaintiffs forwarded checks from the State of Washington to be utilized in the payment for their stock, but said transactions were entirely subject to the approval of the Board of Directors of Blair and the New York Stock Exchange in New York, before such time as the checks could be negotiated in payment of their purchases of stock (Exhibit 8 to Arneil Deposition).

7. Plaintiffs opened their Secured Demand Note account by transfer of stock from a pre-existing account or accounts at Blair in New York, in addition to the making-up any shortage in that account with stock held in the State of Washington (Arneil deposition Exhibit 8, Stockwell deposition at 11).

8. On July 23, 1970, plaintiff Stockwell wrote to Blair requesting that his SDN account not be sold out, complaining that he had not received executed documents, and that he had not signed and returned a "final form" that he had up to that point believed the problems, whatever they may have been with the firm, were being successfully worked out and that he had not been kept fully informed of the developments with respect to Blair. All of these matters related to the conduct of the business of Blair & Co.

and not to the New York Stock Exchange nor the individual defendants (Exhibits 21 and 22 to Arneil deposition).

9. The Exchange made representations to plaintiffs in writting in the form of the stock purchase agreement requiring that the purchase itself be subject to approval by the N.Y.S.E. and in the form of the application for approval by the N.Y.S.E. and in the sahreholders agreement with the Exchange (Exhibit 1 to Arneil deposition; Exhibit 31 to Stockwell deposition; Exhibit X to N.Y.S.E. Notice of Motion).

10. The false representations made to plaintiffs were made in the State of New York and insofar as there were omissions, the duty to make true statements arose in the State of New York (Plaintiffs depositions).

11. The losses suffered by plaintiffs as a result of the transactions in suit occurred in the State of New York where the Secured Demand Note account was located and where the certificate evidencing ownership of their shares in Blair were located. These losses occurred by virtue of the conversion and sale of the SDN accounts and the declaration of bankruptcy by Blair & Co. (Plaintiffs' depositions).

12. The Exchange had full knowledge of the catastrophic condition of the records, record-keeping and financial condition of Schwabacher & Co. prior to the merger (Bishop Affidavit).

13. The Exchange was fully apprised of the short-term investment by Oliver DeG. Vanderbilt in Blair (Rule 311, 312, 313, and 325 of the New York Stock Exchange; Exhibit 13 to Hannan Affidavit).

14. Knowledgeability letters were required by the Rules of the N.Y.S.E. and not merely on an Ad Hoc basis (Rules 313 and 325 of the N.Y.S.E.).

15. The N.Y.S.E. falsely stated that a violation of Rule 419 had been considered in disciplinary proceedings relating to Albert T. Schwabacher, Jr., and Schwabacher & Co. when in fact there was no mention of Rule 419 in the disciplinary proceedings.

Rule 419, if enforced, would have required public disclosure of the chaotic financial condition of Schwabacher & Co., instead, the Exchange covered up and suppressed the violation (Exhibit 17 to Hannan Affidavit).

16. The Exchange's regulatory action with respect to Schwabacher and with respect to Blair after the merger, was in flagrant violation of its own rules which required accurate public dissemination of financial information about members (Rules 417.11 and 410 of the N.Y.S.E.).

17. TheExchange had very solid basis for objection to the acquisition of Schwabacher by Blair in that it knew there was no reliable audited financial information available about Schwabacher it would be necessary to operate separate back offices a a greatly increased expense, the imposition of restrictions upon trading of Schwabacher & Co. greatly increased operating expense, some future decision would be necessary as to intergration of the back offices which could lead to severe problems and the acquisition placed Blair & Co. in a position where it was impossible for it to adequately comply with rules 311, 312, 313, 325, 417.11 and 419 of the N.Y.S.E. The Exhcange's failure to object was plainly negligent at a minimum (Bishop Affidavit; Depositions of Lendman, Vanderbilt and Ramsey).

18. The eventual demise of Blair was due to the acquisition of Schwabacher and the problems intended thereupon (Ramsey deposition at 88 - 90; Exhibit 24 to Hannan Affidavit).

19. The New York Stock Exchange was instrumental in engineering, approving, and suppressing vital information with respect to the acquisition of Schwabacher & Co. by Blair (Ramsey deposition at 86-87, 119, 165-67, 171-72; Exhibit 24 to Hannan Affidavit.

20. Blair was a Delaware corporation with its principal

All

place of business in New York, and the New York Stock Exchange is and was a New York not-for-profit corporation (Complaint and Answer).

21. The sale of securities of Blair to plaintiffs was part of a multi-state effort to obtain net capital for Blair from residents of various states (Hannan Affidavit).

22. Plaintiffs did not learn of the concealed facts which underline this action until after March of 1973. (Stockwell deposition at 57-61)

Dated: January 5, 1976

Respectfully submitted,

SPRENGLER CARLSON GRUBAR & CHURCHILL

LOVITT & HANNAN, INC.

BY J. Thomas Hannan
J. THOMAS HANNAN

412

LUKENS AND RICHARDSON
CHARLES M. RICHARDSON, JR.
1550 Tiburon Boulevard
Belvedere-Tiburon, California 94920
Telephone: (415) 435-2181

Attorneys for Plaintiffs

CLERK, U.S. DIST. COURT
SAN FRANCISCO

United States District Court for the

Northern District of California

ROBERT G. CARR, LUKE S. CHAN, LAURENCE E. GOODFRIEND, JAMES W. GUERIN, ALLAN L. HERZOG, FRANS KLUMPER, A. MICHAEL KOEWLER, GARY KUNTZ, DONALD McQUAID, GERALD A. NELSON, FRANK A. NOTTI, RICHARD E. OWEN, STANLEY D. RAHM, EUGENE B. RAUEN, FRED U. ROGERS, RICHARD H. SELIG, JR. and RALPH T. WELSH, Plaintiffs, vs. BLAIR & CO., INC., OLIVER De G. VANDERBILT, WILLIAM M. LENDMAN, JAMES B. RAMSEY and DOES ONE through THIRTY, Defendants.	No. C 71-1085-SC

AFFIDAVIT OF CHARLES M. RICHARDSON, JR.

REGARDING STATUS OF ACTION

STATE OF CALIFORNIA,)
) ss.
County of Marin.)

CHARLES M. RICHARDSON, JR., having first been duly sworn, deposes and says:

I am one of the attorneys for the plaintiffs above named.

This action was commenced on June 4, 1971, and seeks rescission and damages. Upon serving the defendants, I was

413

advised that on October 2, 1970, a restraining order had been issued by the United States District Court for the Southern District of New York which enjoined all persons from proceeding in any action in which Blair & Co. is a defendant. Copies of letters from the attorneys for defendants Lendman, Ramsey and Vanderbilt, together with a copy of the restraining order are attached hereto as exhibits A through C.

Subsequent to the hearing before this Court on September 12, 1972, I have been informed by the attorneys for Blair & Co., Inc. that the provisions of the restraining order are still in effect.

Until such time as this order is modified or dissolved, plaintiffs cannot prosecute this action.

Plaintiffs' attorneys will continue to maintain close contact with the bankruptcy proceedings in New York so as to be in a position to proceed promptly when permitted to do so by the United States District Court for the Southern District of New York.

/Charles M. Richardson, Jr./
Charles M. Richardson, Jr.

Subscribed and sworn to before me this 4th day of November, 1972.

/ Judith S. Paulson /
NOTARY PUBLIC
State of California

MILGRIM THOMAJAN & JACOBS
ATTORNEYS AT LAW

SIGMUND A. JACOBS
ROBERT A. JACOBS
RAYMOND A. MANTLE
ROGER M. MILGRIM
ROBERT THOMAJAN

25 BROADWAY
NEW YORK, N.Y. 10004
(212) 344-3434
CABLE: MILGATOM NYC

July 6, 1971

Charles M. Richardson, Jr., Esq.
44 Montgomery Street
Suite 3666
San Francisco, California 94104

Carr v. Blair & Co., Inc., et al.

Dear Mr. Richardson:

This firm is counsel to Messrs. Ramsey and Vanderbilt, individual defendants in the above-captioned action. On October 2, 1970, the United States District Court for the Southern District of New York issued a restraining order prohibiting all parties from maintaining or proceeding in suits in which Blair & Co., Inc. is a named defendant. A copy of that restraining order is enclosed for your reference.

In light of the foregoing, we are unable to proceed with the defense of this action and we ask that you mark your records accordingly.

Very truly yours,

Robert Thomajan

RT/ta

Enclosure

Exhibit A

BEST COPY AVAILABLE

MILGRIM THOMAJAN & JACOBS
ATTORNEYS AT LAW

SIGMUND A. BECA
ROBERT M. JACOBS
RAYMOND A. MANTLE
ROGER M. MILGRIM
ROBERT THOMAJAN

25 BROADWAY
NEW YORK, N.Y. 10004
(212) 344-4454
CABLE "MILGATOM NYC"

September 14, 1971

Charles M. Richardson, Jr., Esq.
44 Montgomery Street
Suite 3666
San Francisco, California 94104

Carr v. Blair & Co., Inc., et. al.

Dear Mr. Richardson:

This firm is counsel to Mr. William Lendman, an individual defendant in the above captioned action. On October 2, 1970, the United States District Court for the Southern District of New York issued a restraining order prohibiting all parties from maintaining or proceeding in suits in which Blair & Co., Inc. is a named defendant. A copy of that restraining order is enclosed for your reference.

In light of the foregoing, we are unable to proceed with the defendant of this action and we ask that you mark your records accordingly.

Very truly yours,

Raymond Regan

RR:cf

Enclosure

EXHIBIT B

2/6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of BLAIR & CO., INC. Alleged Bankrupt	In Bankruptcy No. 70-B-755

RESTRAINING ORDER

At New York, in said district, on the 21 day of October 1970.

Upon the annexed application of Patrick D. Scorese, as liquidator, appointed by the New York Stock Exchange for Blair & Co., Inc. dated October 2, 1970, and upon the involuntary petition in bankruptcy filed against Blair & Co., Inc. with this Court on the 29th day of September 1970 and no adverse interest having been represented and it appearing to me that no notice need be given as sufficient cause appearing to me therefor; it is

ORDERED, that any and all persons be, and they hereby are, jointly and severally, stayed, restrained and enjoined from commencing or continuing or proceeding in any action or proceeding wherein the above-named alleged bankrupt is a defendant until the final decree in the above-entitled proceeding or until further order of this Court; and it is further

Exhibit C

417

ORDERED, that all persons, firms, and corporations, their representatives, agents, attorneys and servants, and all sheriffs, marshals, and other officers and their deputies be and they hereby are jointly and severally, stayed, restrained and enjoined from removing, transferring, disposing of or attempting to in any way remove, transfer, or dispose of, or in any way interfere with any property, assets or effects owned by or in the possession of Blair & Co., Inc; and all said persons are further enjoined, stayed and restrained from executing, issuing or causing the execution or issuance by any court of any writ, process, summons, attachment, replevin, execution or any other proceeding for the purpose of impounding or taking possession of or interfering with any property owned by or in the possession of Blair & Co., Inc., its agents, servants or attorneys; and each and all of said persons, firms or corporations having process against Blair & Co., Inc. are hereby jointly and severally, stayed, restrained and enjoined from taking any action, measures or proceeding or doing any act or thing in any action wherein Blair & Co., Inc. may be a defendant or respondent and from causing, procuring, suffering or permitting the same to be done until further order of this Court; except that the provisions herein shall not be applicable to an action or suit pending on September 29, 1970 to enforce a lien upon the property of Blair & Co., Inc.

S/ Roy Babitt

LUARKS AND RICHARDSON
CHARLES M. RICHARDSON, JR.
1550 Tiburon Boulevard
Belvedere-Tiburon, California 94920
Telephone: (415) 435-2181

Attorneys for Plaintiffs

ORIGINAL
FILED
OCT 5 - 1973
CLERK, U. S. DIST. COURT
SAN FRANCISCO

United States District Court for the

Northern District of California

ROBERT G. CARR, LUKE S. CHAN, LAURENCE E. GODFRIEND, JAMES W. GUERIN, ALLAN L. HERZOG, FRANS KLUMPER, K. MICHAEL KOEHLER, GARY KUNTZ, DONALD McQUAID, GERALD A. NELSON, FRANK A. NOTTI, RICHARD E. OWEN, STANLEY D. RAHN, EUGENE B. RADEN, FRED D. ROGERS, RICHARD H. SELIF, JR. and RALPH T. WELSH, Plaintiffs, vs. BLAIR & CO., INC., OLIVER De G. VANDERBILT, WILLIAM M. BENDHEIM, JAMES B. RAMSEY and DOES ONE through THIRTY, Defendants.	No. C 71-1085-SC

AFFIDAVIT OF CHARLES M. RICHARDSON, JR.

REGARDING STATUS OF ACTION

STATE OF CALIFORNIA,)
) ss.
County of Marin.)

CHARLES M. RICHARDSON, JR., having first been duly sworn, deposes and says:

The purpose of this affidavit is to supplement my previous affidavit which was filed with this Court on November 7, 1972.

I have been advised by Weil, Gotshal & Manges, attorneys

419

for the liquidator for Blair & Co., Inc., that the restraining Order issued by the United States District Court for the Southern District of New York is still in effect. A copy of the letter to the undersigned from said attorneys is attached hereto as Exhibit A.

Plaintiffs' attorneys will continue to maintain contact with the proceedings in the United States District Court for the Southern District of New York so as to be in a position to proceed when allowed to do so.

/s/Charles M. Richardson, Jr.
Charles M. Richardson, Jr.

Subscribed and sworn to
before me this 4th day
of October, 1973.

/s/Carol L. Wardlow

NOTARY PUBLIC
State of California

WEIL, GOTSHAL & MANGES
767 FIFTH AVENUE - NEW YORK, N.Y. 10022
TELEPHONE (212) PLAZA 8-7000

CABLE "WEGOMA"
TELEX 423446

CHARLES SELIGSON
COUNSEL

September 26, 1973

LUKENS AND RICHARDSON
RECD SEP 28 1973

Charles M. Richardson, Jr., Esq.
Lukens & Richardson
1550 Tiburon Boulevard
Belvedere-Tiburon, California 94920

Re: Blair & Co., Inc.

Dear Mr. Richardson:

You have asked us whether or not the stay of suits entered in the arrangement proceedings involving Blair & Co., Inc. on April 23, 1971 is still in effect. For your information, Blair is still operating its business as debtor-in-possession under Chapter XI of the Bankruptcy Act pursuant to an order of the United States District Court for the Southern District of New York, dated April 16, 1971. Accordingly, that court's stay of suits is still in effect and your clients are therefore enjoined from proceeding against Blair in the Northern District of California.

Of course, if your clients have asserted their claims against Blair in the Blair Chapter XI proceedings, the entire matter can be litigated in the Bankruptcy Court.

If you have further questions, please do not hesitate to communicate with us.

Very truly yours,

WEIL, GOTSHAL & MANGES

By M. L. Cook

MLC:mnf

Exhibit A

LUKENS AND RICHARDSON
CHARLES M. RICHARDSON, JR.
1550 Tiburon Boulevard
Belvedere-Tiburon, California 94920
Telephone: (415) 435-2181

Attorneys for Plaintiffs

ORIGINAL FILED

APR - 1 1974

CLERK, U. S. DIST. COURT
SAN FRANCISCO

United States District Court for the
Northern District of California

ROBERT G. CARR, et al., Plaintiffs, vs. BLAIR & CO., INC., et al., Defendants.	No. C 71-1085-SC

AFFIDAVIT OF CHARLES M. RICHARDSON, JR.
REGARDING STATUS OF ACTION

STATE OF CALIFORNIA,)
) ss.
County of Marin.)

CHARLES M. RICHARDSON, JR., having first been duly sworn, deposes and says:

The purpose of this affidavit is to supplement my previous affidavits relating to the status of the action.

On March 18, 1974, I was advised by Michael L. Cook, Esq. of the firm of Weil, Gotshal & Manges, attorneys for the Special Trust Fund of the New York Stock Exchange, Inc. That the stay of suits entered by the Bankruptcy Court on April 23, 1971, is no longer in effect.

Mr. Cook has advised affiant that he expects to be in San Francisco during this month to discuss possible settlement of this action and various claims filed by plaintiffs in the Bankruptcy Court.

RECD APR 2 1974

In view of these developments, affiant respectfully requests that this status conference be continued for sixty (60) days.

/s/ Charles M. Richardson, Jr.
Charles M. Richardson, Jr.

Subscribed and sworn to before me this 28th day of March, 1974.

/s/Judith S. Patterson
NOTARY PUBLIC
State of California

(Seal)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

BLAIR & CO., INC.,

Debtor.

BLAIR & CO., INC.,

Plaintiff,

-against-

JAMES ARNEIL and VERNON A. STOCKWELL,

Defendants.

Bankruptcy No. 70 B 755

COMPLAINT FOR INJUNCTIVE RELIEF UNDER RULE 11-61

Blair & Co., Inc. ("Blair"), by its attorneys, Weil, Gotshal & Manges, complaining of the above-named defendants, alleges as follows:

1. On April 15, 1971, Blair filed in this court a petition for an arrangement under Chapter XI, Section 321 of the Bankruptcy Act (the "Act"), and on October 2, 1973, the court entered an order confirming the arrangement proposed by Blair with its general unsecured creditors.

2. Prior to the commencement of the Blair Chapter XI case, Blair was engaged in the general brokerage and commission business as a registered broker-dealer and member of the New York Stock Exchange, Inc., as well as other national securities exchanges.

3. The order confirming Blair's Chapter XI plan (the "Order of Confirmation"), a copy of which is annexed hereto as Exhibit "A", expressly provides that by virtue thereof, Blair

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was "discharged from all of its unsecured debts and liabilities provided for by the [confirmed] arrangement or in [the Order of Confirmation]...."

4. The Order of Confirmation also provides in relevant part that "[a]ll creditors affected by the provisions of the [confirmed] arrangement, be, and they hereby are, forever restrained and enjoined from taking any further action or proceeding in connection with their...claims, except to enforce the consummation of the provisions of the arrangement, as confirmed."

5. The defendants had actual notice of the pendency of the Blair Chapter XI case.

6. The defendants were listed on the statement of debts which Blair filed with the court on June 23, 1971.

7. Notwithstanding the foregoing, the defendants commenced a plenary action against Blair (the "plenary action") and others in the United States District Court for the Southern District of New York on or about April 11, 1975, asserting a claim for an alleged liability which arose prior to the commencement of the Blair Chapter XI case.

8. By virtue of the Order of Confirmation, any claims which the defendants had against Blair were discharged and they were forever enjoined from prosecuting such claims.

9. In view of the foregoing, plaintiff submits that the court should specifically enjoin defendants from continuing their prosecution of the plenary action as against Blair.

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WHEREFORE, plaintiff Blair & Co., Inc. demands judgment against the defendants (a) specifically enjoining them from their continued prosecution of the plenary action as against it, and (b) granting plaintiff such other and further relief as is just.

Dated: New York, New York
September , 1975

WEIL, GOTSHAL & MANGES
Attorneys for Blair & Co., Inc.

By: _____
A Member of the Firm
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

NEW YORK STOCK EXCHANGE, INC.

DEPARTMENT OF MEMBER FIRMS

* * *

New York, April 15, 1971
(11:00 A.M.)

MR. JAMES B. RAMSEY, JR., former President of Blair & Co., Inc., accompanied by Robert Thomajan, Esq., of Milgrim, Thomajan & Jacobs, appeared before Mr. Jeffrey Morrison, Conduct Investigator, of the Department of Member Firms, when the following discussion took place:

MR. MORRISON: Let's open the record.

Mr. Ramsey, for purposes of identification, I am Jeff Morrison, a member of the staff of the Department of Member Firms. The Board of Governors has delegated to me the authority to require members, allied members and former allied members of member organizations to appear and testify in connection with investigations. Any statements you make to me today are the same as statements made by you to the Board of Governors itself.

I should also like to remind you that a member,

(1)

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Q. And?

A. Subsequently, another team of accountants, as I remember it, Arthur Anderson and also Arthur Young, were persuaded to take another look at Schwabacher. Some weeks later --

Q. Persuaded by whom?

A. Persuaded is not the best word. Suggested that we look at it again.

Q. By whom?

A. By the Exchange; that the situation had changed for the better, and that a subsequent examination might prove that the situation had improved a great deal. This was some time after Thanksgiving of 1968. Then many meetings later between Mr. Lendman, Schwabacher, the SEC, the New York Stock Exchange, et cetera, produced a merger.

Q. You mentioned Mr. Lendman had originally disapproved of any merger possibilities because of the condition of Schwabacher. Do you feel that this had anything to do with his resignation from Blair & Co.?

A. Because he originally disapproved of it?

Q. Were there any problems by the Schwabacher partners, such as promises unkept as far as the capital commitments and contributions to the new firm were concerned?

A. Promises, no, but a very serious capital situation arose from the western division audit, inasmuch as the money, hopefully that would be found at that audit to purchase and pay for a great deal of Blair stock was not forthcoming.

Q. Prior to the merger, what steps did Blair take to evaluate the books and records of Schwabacher & Co.?

A. Originally, the Stock Exchange requested, or suggested that we take a look at Schwabacher & Co. who were experiencing difficulties. Mr. Lendman conducted an examination of Schwabacher, and declined to go forward with a merger.

Q. On what grounds?

A. He felt that the condition of Schwabacher had deteriorated to a point that it would be unwise to accept such a merger.

(3)

the merger produced two men for one obvious job. I tried, insofar as possible, to keep the man, whether he was from the Schwabacher organization or the Blair organization, in the most responsible position. I can think of the occasion where a syndicate man, who was the son of a Schwabacher partner, had to be eliminated.

Q. His name?

A. William Cahn, III, C-a-h-n. His father was obviously quite distressed that such a thing happened. I could think of a circumstance such as this, that even though we tried, in some cases, to bring a man from California, for example, a Mr. Skinner who would have taken one of the top slots in New York, obviously a person in New York would be somewhat chagrined at that development. So, beyond the normal dislocation of people in any merger, I would say the relationship was good.

Q. Did Albert Schwabacher present any problem?

A. I found Mr. Albert Schwabacher completely cooperative.

(4)

the restrictions from the date of the merger and before and until his resignation on April 30th. Inasmuch as many restrictions still remained on April 30th, I proceeded to try to get these lifted, but a general deterioration of the market had already begun, so that volume was a factor in profitability at that point. But, for example, I can remember that the first two months of the Schwabacher merger was most difficult, in that in that short period of time some $700,000 in losses came from the western division operation. So, therefore, you would have to say that the contributing factors, meaning the merger, was definitely an undertaking which we should not have done.

MR. MORRISON: Off the record.

(Discussion off the record.)

MR. MORRISON: Back on the record.

Q. Mr. Ramsey, was there any animosity between partners of Blair and Schwabacher which could be construed as having a deleterious effect on the management of the firm?

A. There was an occasional situation where

remained on the Schwabacher organization after the merger, made it virtually impossible for the western division to contribute.

Q. Had you been given any indication that once the merger between Blair and Schwabacher had been consummated the restrictions would have been immadiately lifted?

A. Mr. Lendman had indicated that this had been a fait accompli.

Q. What was the source of Mr. Lendman's information, do you know, sir?

A. No, but I assume it was the meeting with the SEC in Washington.

Q. Had you had any occasion to discuss the problem with the SEC after Mr. Lendman's resignation?

A. Not directly with the SEC. I did ask Mr. Daley, one of our attorneys, to work as diligently as possible to see if the restrictions could not be lifted immediately; but remember, Mr. Lendman stayed on for two months after the merger.

Q. From what time to what time?

A. Mr. Lendman was working on the lifting of

(6)

Q. This was the 16th of January, was it not, sir?

A. I called the meeting for the insiders and outsiders of Blair on January 15 and informed the Exchange on the 16th. I had told the people at the Bankers Club that I would go to the Exchange the following day; that while I was unaware of our capital position I felt it was serious enough to inform the Exchange that a capital violation might be in existence. With the records I had then, there was no way to be sure.

Q. Would you consider the conversion of the ACS to the Midwest system the major reason for the downfall of Blair?

A. It is hard to pin the liability on a major reason; I think there were several contributing major reasons.

Q. Would you discuss those, sir?

A. I think it is quite obvious, in light of the facts, that we never should have done the Schwabacher merger. Then, the fact that very many restrictions

(7)

(12)

NEW YORK STOCK EXCHANGE

Department of Member Firms

February 17, 1969

TO: Board of Governors

FROM: Department of Member Firms, and
Schwabacher & Co. and its General Partners

SUBJECT: Statement of Facts, Charges and Admission of Violations of Rule 440 and SEC Rule 17a-3, both dealing with the maintenance of books and records, Rules 402 and SEC Rule 8c-1, both dealing with the segregation and hypothecation of securities, and Rule 342 (supervision and control), Rule 401 (good business practice) and Rule 417.11 (audits)

STATEMENT OF FACTS

Schwabacher & Co. has been a member organization since March 1, 1930. In the past few years, they have conducted a diversified securities business from their main office in San Francisco, California, and 15 branch offices. Schwabacher & Co. has 33 general partners, 13 limited partners, 193 registered representatives, and 612 operational and other personnel. They handle approximately 24,260 active customers' accounts, of which 4,239 are margin accounts.

Mr. Albert E. Schwabacher, Jr. is a senior partner who during the last three years has been the firm's chief executive. The principal capital partners are Mr. Schwabacher, William M. Cahn, Jr. and Clarence E. Heller, whose interests in capital are 22.858%, 12.572% and 13.714%, respectively. Mr. Schwabacher in 1966 was also managing partner. Darrell J. Winrich was managing partner from mid September 1966 to the end of December 1967. Mr. Schwabacher was managing partner in the interim until March 8, 1968, when Richard W. Muir became the firm's managing partner.

EXHIBIT C

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434

Mr. Winrich's background was in security analysis. Mr. Muir's background was in sales management.

Mr. J. H. Moelter was employed by the firm in June 1967 and became a general partner on July 6, 1967, in charge of operations. Mr. Moelter was succeeded in operations management by Mr. R. L. Holvenstot in August 1968.

A February 1965 Exchange examiner's visit and an August 1965 audit showed no major operations problems. In January 1966, Schwabacher & Co. converted its bookkeeping operations to the Midwest Service Bureau's facilities. In April 1966 it was reported to the Exchange that the conversion was not as smooth as the firm would have liked it to be. It was learned late in October 1966, as the result of an audit, that short security differences were almost $14,000,000 indicating a substantial failure to keep accurate records. However, this figure was reduced within 4 days to about $4,500,000 and a week later to $3,700,000. Because of these differences, substantial capital was contributed to assure compliance with Exchange minimum capital requirements. As a result of the differences there was also a substantial delay in completing the audit and returning answers to a regular financial questionnaire as of October 28, 1966. The answers were received March 3, 1967, which was 93 days following the original due date. They showed short securities differences amounting to $2,376,757. The audit also showed securities not properly segregated of $6,066,910.

Although special effort was made to correct past differences and eliminate the possibility of new ones being created, over the next

two years the changes in supervisory management, the acquisition of new operating personnel and assistance given by accounting firms failed to provide Schwabacher & Co. with reasonable control of the input of its business to assure current records which were in balance and reasonably accurate.

By way of illustration, an Examiner's visit in September 1967 resulted in a 65-page report of record keeping deficiencies, the longest ever produced as the result of an Examiner's visit. The report dealt with out-of-balance conditions, errors in submitting financial questionnaires, commingling of partner and customer securities in the firm's safekeeping box, excessive "edits" representing errors of input to the Midwest system, inadequate attention to customers' unsecured debits and short positions, inordinate delays in COD deliveries, payment of customer and laxity in transfer in cases of sales of non-negotiable securities, security count differences, under-segregation in margin accounts, failure to segregate fully paid for securities in cash accounts, deficiencies in accomplishing shipping instructions, delays in margin department release of transfer instructions and cage processing of transfer instructions and segregation instructions, unauthorized release of segregated securities, lack of control of excessive fails, unreconciled clearing house accounts and brokers accounts, a breakdown in new accounts procedu resulting in loss of control of commingling of customers securities without consent in bank loans, commingling of partners securities with customers in bank loans, unreconciled suspense accounts, and dividend department out of control.

000002A

Although reports by the firm to the Exchange thereafter indicated an improving condition, early reports from an audit by Hood and Strong as of August 30, 1968, indicated differently. Consequently, an Examiner was sent to the firm in November 1968. He found that there were approximately 31,000 "edits" indicating record-keeping errors which needed correction, that there were more than $7½ million of DK fails, that monthly fail figures reported to the Exchange were inaccurate by as much as $6 or $7 million, that dividend condition could not be determined, that control had been lost over a major bank account, that 10 suspense accounts of the New York office were out of control.

The answers to a financial questionnaire based upon an audit by Hood and Strong as of August 30, 1968, could not be submitted until November 20, and indicated that the firm's records were in far worse condition than had been known.

At or about the audit date it was thought that the short security differences were substantially less than eventually reported in the firm's financial questionnaire. An operations questionnaire received from the firm as of August 30, 1968, the audit date, showed long and short security differences of $4,283,633 and $2,942,851, respectively. The financial questionnaire as of the same date showed the market value of these differences to be $7,743,619 long and $7,103,251 short. The auditors did state in their report that many correcting entries have been made by employees of the firm which could not be taken into consideration by the auditors either because the adjustments could not be located, or if located not accepted, the entries were received

too late to be verified or made as of a date subsequent to the audit date. The auditors stated in their report that differences to a considerable extent were the result of the unsatisfactory condition of the accounting records and material inadequacies in the internal accounting controls.

Schwabacher & Co., as a result of its inability to handle its business on an operationally sound basis, was first placed on restriction by the Exchange in February 1968. The firm was restricted from increasing its registered representatives and offices and asked to reduce its volume, freeze the opening of new accounts, cease trading and reduce underwritings and advertising. Later a restriction was placed on the number of trades the firm could handle on a daily basis.

In late October 1968, the Exchange determined that the business of Schwabacher & Co. must be further reduced, and in early December placed a December 15 deadline for the firm's decision either to merge with another firm or sell a number of branch offices.

By that date, arrangements for a merger with Blair & Co., Inc. were completed, to be accomplished about March 1, 1969. Since mid-December, the operations of Schwabacher in San Francisco and New York have been under the effective supervision of executives of Blair & Co., Inc.

On several occasions during the past three years, Schwabacher & Co. has had short security differences which if charged against their net capital would have resulted in violations of Rule 325. However, it has been the practice of the Exchange instead to insist that a substantial cushion of excess net capital be maintained against short security differences, the amount determined in individual cases by the age of the

000092

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differences and related circumstances. It has been necessary on several occasions for the Exchange to require Schwabacher & Co. to raise substantial excess net capital in view of their short differences and they have done so.

The Department of Member Firms charges on the basis of the above Statement of Facts that:

(1) Schwabacher & Co. and its general partners violated Rule 440 and SEC Rule 17a-3 (books and records), Rule 402 and SEC Rule 8c-1 (segregation and hypothecation), Rule 342 (supervision and control), Rule 401 (good business practice), and Rule 417.11 (audits).

(2) Albert E. Schwabacher, Jr. violated Rule 342 (supervision and control) and was principally responsible for the firm's violations.

The firm and its general partners are subject to discipline under the provisions of Sections 6, 7, 10 and 16 of Article XIV of the Exchange Constitution.

Robert M. Bishop

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92d Congress, 2d Session - - - - - - House Report No. 92-1519

SECURITIES INDUSTRY STUDY

REPORT

OF THE

SUBCOMMITTEE ON COMMERCE AND FINANCE

OF THE

COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

OCTOBER 4, 1972.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
84-694 WASHINGTON : 1972

[illegible]

was still carrying short record differences carried over from its 1969 audit.[15] A subordinated loan by the NYSE to Hayden, Stone was conditioned on Hayden, Stone's buying in its aged differences, some of which were three years old.[16]

The Commission charges the full amount of short stock record differences to net worth in computing net capital under Exchange Act Rule 15c3–1. This same procedure was followed by the NYSE under its net capital rule, Rule 325, until May 6, 1969. Thus, an internal NYSE memorandum to the staff dated May 5, 1969 stated:

Re Treatment of unlocated short differences

Effective with analysis of answers to financial questionnaires made on and after May 6, 1969, we will reverse our previous method and compute original Capital positions without any deduction for unlocated short differences.

Immediately after the presentation of the original capital position on the face of analysis an adjusted capital position will be shown giving effect to deduction of short differences and a notation relative thereto.

The form of the notation relative to the adjusted capital position should be substantially as follows:

"The market value of Unlocated Short Differences reported in the answers in the amount of $---------- have not been deducted from the above net capital. If these values had been deducted the capital position would be as follows: Net capital, $----------; ratio, ----%."

A similar notation should appear in visit reports in connection with capital positions at answer dates and current dates when applicable. If the answers being reviewed in a field visit were analyzed on the old basis, capital position in visit reports must be stated in accordance with new method.

L. W. McCormick.

This policy of the NYSE was stated publicly by an Exchange official at a panel discussion on June 23, 1969. The record of the panel discussion reveals this Exchange's position with regard to short stock record differences:

> Our policy is and has been for sometime in the past one whereby we compute capital without writing off any short security differences. We made a capital computation on that basis.
>
> We then adjust that capital computation to reflect what the capital position would be if we wrote off the short security differences.
>
> These two positions are then referred to the administrative end of the Exchange, the Department of Member Firms and its coordinators, and there is a work-out between the Stock Exchange and the member firm on the resolving of the details as it applies to their capital."[17]

The effect of this change in procedure and the "work-out" between the Exchange and the member firm was to "sweep under the rug" a highly dangerous element. Retail houses, were particularly affected adversely by this approach. Table VI shows the net capital ratios computed before and after deduction of short stock record differences from net worth. In firms that failed and had to be taken over, the matter of being in compliance with the net capital rule depended upon the difference between charging and not charging the firm for such differences.

---

[15] Memorandum to the Commission, October 29, 1970. "At present, it appears that [short record] differences dating back to 1968 amount to $2,530,000 long and $9,532,000 short."

[16] June 25, 1970, agreement between Hayden, Stone and the NYSE.

[17] The statement was made at a panel conference at New York University on the subject of the "surprise audit" by independent public accountants.

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CONFIDENTIAL

7

Schwabacher & Co.

SAN FRANCISCO
LOS ANGELES
FRESNO
HONOLULU
LAS VEGAS
MONTEREY
OAKLAND
PALO ALTO

INVESTMENT SECURITIES
100 MONTGOMERY STREET AT SUTTER
TELEPHONE FURTHER LEAD
SAN FRANCISCO

MEMBERS
NEW YORK STOCK EXCHANGE
AMERICAN STOCK EXCHANGE
PACIFIC COAST STOCK EXCHANGE
AND OTHER LEADING SECURITY AND COMMODITY EXCHANGES

NEW YORK
SANTA ROSA
SALT LAKE CITY
SAN JOSE
SANTA BARBARA
SANTA ROSA
SONOMA
NAPA

April 12, 1968

To All General Partners:

At the conclusion of my first month in this new assignment, I would like to bring to your attention certain recent developments affecting the partnership and give you my observations relating to them. In informing you of these matters, I would at the same time remind you of the need for discretion in communicating this information to those outside the circle of partners.

During the past few weeks, we have been in fairly active communication with the New York Stock Exchange relative to the persistent operational problems which have troubled our firm. We have worked continually, if at times ineffectually, to eliminate these problems; now, in concurrence with Exchange officials, we are taking extraordinary measures designed to improve the operating capabilities of our firm. In many respects, we have done much to solve the quantitative problem of our business, i.e., how to create income. What we have yet to solve is the qualitative problem, i.e., how to handle accurately and expeditiously the business entrusted to us by our customers. In the months immediately ahead, the major attention of Schwabacher & Co. will be directed toward a permanent resolution of operating problems. This will be our primary area of concentration.

In furtherance of this major objective, the following courses of action are being pursued:

1. We have suspended, at least through June 30, the recruiting and hiring of additional Account Executive trainees.

2. We have placed a temporary moratorium on the opening of additional branch offices.

3. We are reducing the funds previously budgeted for advertising in 1968. This appears particularly appropriate since we have been spending a proportionately greater percentage of our income for advertising than have other firms of similar size.

4. We have retained a number of public accountants from major firms to help us eliminate accounting backlogs. In addition, we have retained qualified consultants and specialists to advise us in such areas as systems management and control, organization and salary administration.

5. We have recruited additional supervisory personnel for our Cashiers Department both in San Francisco and New York, most of whom have had previous experience on the Midwest system. Also, a new Head Cashier with ten years experience, much of it on Midwest, will join us in early May.

6. We have conducted a special Branch Managers' conference, emphasizing the responsibility of the Branch Manager in working to reduce the number of items to be processed by operations while, at the same time, preserving or increasing our level of income.

7. We have released certain Account Executives who have failed to meet our standards of productivity or reliability.

8. To the extent possible, we are endeavoring to hold our daily average number of transactions below a specified level as requested by the Exchange.

In general, our immediate aim is to avoid placing additional strain on Operations while we are attempting to identify and root out the causes of our difficulties.

Since unreconciled accounting differences operate to diminish the effective capital of the firm, we have moved to strengthen capital in various ways:

- We have selectively reduced our underwriting commitments.
- We have cut back the inventories of securities maintained by both our Trading and Municipal Departments.
- We have secured the addition of $1 million in net capital from certain partners and/or their immediate families.
- And, of course, we are striving to eliminate the accounting differences which impelled us to take these other steps.

Pervasive in our consideration of our operating problems has been the desire to identify the sources of these problems and to effect permanent solutions rather than to seek temporary remedies. Such an effort involves, among other things, a review of our personnel policy; particularly, we are interested in the reasons which lie behind the extraordinary turnover in employees of operating departments during the past two years. It involves a study of

000005

systems and procedures and improvements required for them to be effective. It involves a probing for deficiencies in organization and leadership at all supervisory levels. For these reasons, we cannot assure any comprehensive solution to these problems over the near term. But, we do visualize a gradual improvement from this point as our programs are more fully defined, are implemented and begin to take hold.

These matters will be reviewed fully in our Partners' meetings of May 3 and 4; however, if you desire further information at this time on any aspects of the problems set forth above, please call me and I will discuss them with you.

We do not underestimate the magnitude of the task that lies before us; nonetheless, we are completely confident that these difficulties can and will be overcome and that a much stronger Schwabacher & Co. will emerge as a result of our collective efforts. May I thank you for your support and assistance in helping me to meet successfully the challenges of this assignment. I will offer my very best and will expect the best from each of you.

Your partner and friend,

Richard W. Muir

RWM:go

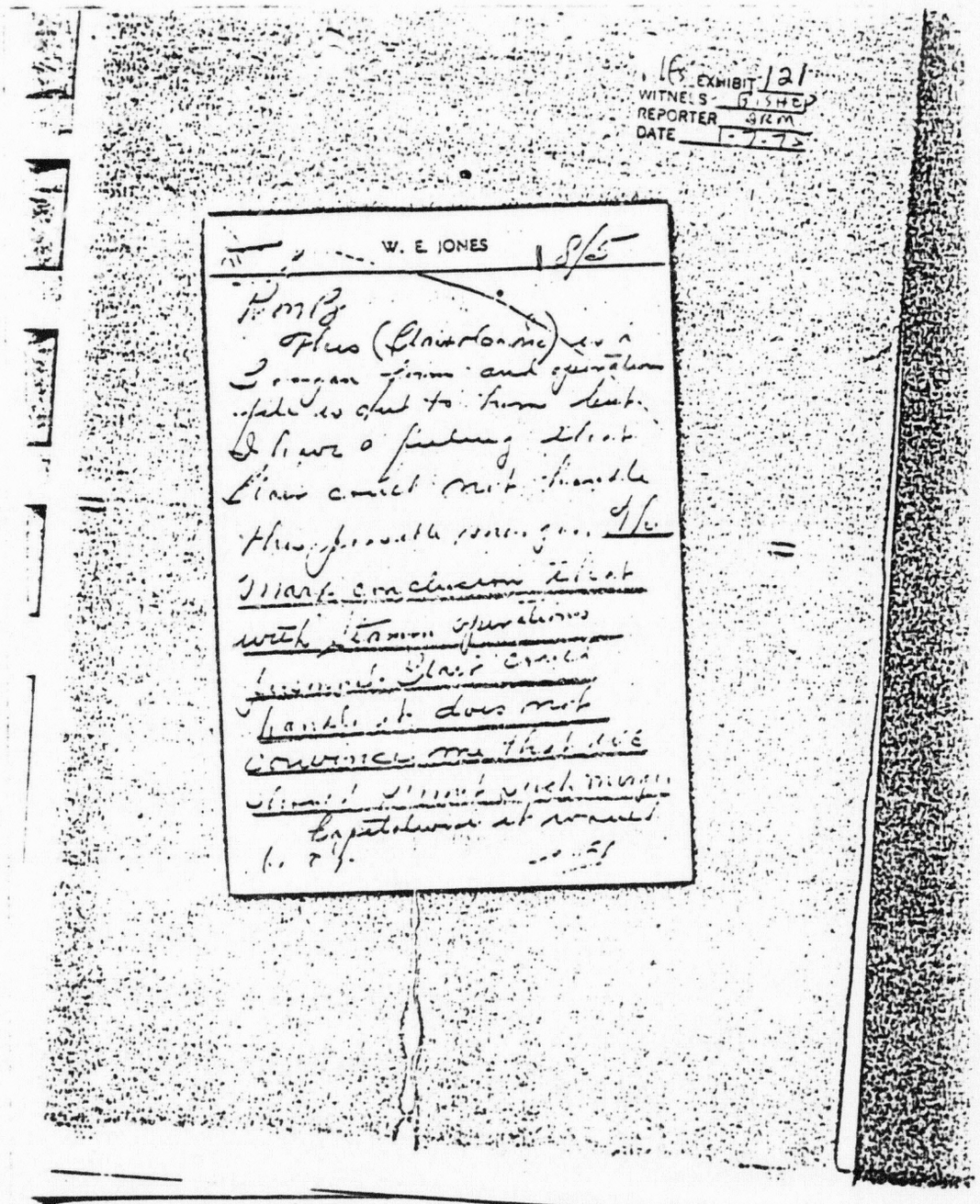

EXHIBIT 121
WITNESS - FISHER
REPORTER ARM
DATE 1-7-72

W. E. JONES

8/6

P.M.P.

Opus (Electronic) is a
Oregon firm and operation
which is tied to Hunt Tech.
I have a feeling that
Elmer Cook might handle
this through some gov. d/c.
Hunt's reaction that
with known operations
Security Pac. could
handle it does not
convince me that we
should disqualify
Capitol and Arnett
[illegible]

8

CCC11

NEW YORK STOCK EXCHANGE

MEMORANDUM

September 17, 1968

PIES EXHIBIT 126
WITNESS BISHOP
REPORTER NEW
DATE 1-7-75

TO: Mr. David Fuchs

FROM: A. R. Mannarino and A. V. Savoca

SUBJECT: Blair & Co. - Cost Consultation on September 13 held at their office.

Present were the following operations personnel: Messrs. Jim Rush, Bruce Anderson, Vincent Carrish, Larry Favendello and Mike Colcen.

Background

Blair & Co. was a Group 2 firm with a return on SCI of 2.6%. They are in the midst of an expansion program which started last year. The firm had a cost consultation in 1967 and intends to have one every year hereafter.

Since the firm is in the process of expansion, the most important point of discussion was their income per employee and general partner.

Income Per Employee

Blair & Co. had 125 more employees than the average firm in Group 2. They ranked sixth in number of personnel while ranking 17th in gross income. As a result of this their gross income per employee and general partner was $20,633 compared to the group average of $39,509 making them last of the 24 firms in their group.

Registered representatives accounted for most of their employees. Blair employed over 200 more than the average firm placing them second in their group. The large sales force is the result of their expansion program which started 2 years ago when they merged and acquired some smaller firms. Although the firms gross income per employee was low they have experienced record growth in almost every area of income and expect this growth to continue. Many of the firms RR's who were newly registered during the year and had low production are expected to increase their productivity so that this statistic should improve greatly next year.

000012

MISCELLANEOUS POINTS

Cost Statistics

The firm is a member of the Wright Associate group. However, they feel that cost statistics given in our consultations are better in that we compare firms based on size rather than grouping all firms together as does the Wright analysis.

Floor Brokers

Approval has been given recently for the placing of more men on the floor. However, the firm is experiencing difficulty in finding these people.

Stock Loan Department

In 1960, the firm started a Stock Loan Department and expect a large profit on interest this year.

Conclusion

Since this firm had a cost consultation last year, points covered at that time were written up in the memo prepared then.

MEMORANDUM

Pfs EXHIBIT 139
WITNESS BISHOP
REPORTER ADM
DATE 1-7-75

November 26, 1968

RE: Schwabacher & Co.

Mr. William Lendman (Blair & Co., Inc.) reported in a meeting with Mr. Arning and me, the following details of their pending agreement with Schwabacher & Co.

1. His operations executives who have been at Schwabacher for a week report that their current operation is adequate and that Holvenstot is taking hold on resolution of old errors.

2. Moelter has been over his head. Our examiners have treated him charitably, not seeing the lack of effective supervision at the firm. Lendman as advisory to Schwabacher has seddom recommended that Moelter be terminated and this will be done this week, putting Holvenstot in full operations charge.

3. The Schwabacher general partners capital of $2.8 million will become stock and loans to Blair and an additional $17 million of related Schwabacher capital as well will be locked into Blair for five years. Limited partners capital of about 3/4 million will be let out in a shorter time, perhaps 2½ years.

4. Al Schwabacher will be on the Blair board, but will have no part in management. All other Schwabacher partners will become Blair allied members, except Heller, who will be a non-voting stockholder.

5. The firms will be merged, perhaps in January, with Blair taking over all Schwabacher liabilities. All Schwabacher errors will be placed in single account and profit or loss eventually established charged to present Schwabacher partners.

6. Blair will add $6 million of capital from present participants, and will loan $6 million to Schwabacher for 6 months.

7. Blair is getting agreement of all Schwabacher general partners that Blair loan will be senior to their capital whilb Schwabacher & Co. ~~customers~~ in existence. Blair capital will be at equal risk with that of Schwabacher limited partners.

8. Another audit will be done of Schwabacher by Arthur Young & Co. as soon as possible. WEJ should prepare a letter to Schwabacher requiring this audit under our rule, and LMcC should attempt to expedite Arthur Young & Co. doing it.

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10. After th[illegible]erger, the West Bank Coas[illegible] operations will be known as the "Schwa[illegible]cher Division of Blair & [illegible], Inc."

B

Robert M. Bishop, Director
Department of Member Firms.

cc: WEJ
LHC

[redacted]

[redacted]

[redacted]

2413-10

November 30, 1960

Mr. Jay Pritzker
1150 Laurel Street
Winnetka, Illinois

Dear Mr. Pritzker:

Enclosed, for your consideration, is a set of papers relating to the proposed loan by Blair & Co., Inc. to Schwabacher & Co., the related loan by you to Blair, and the personal stock option to be granted by Blair to you. I suggest you disregard original drafts of certain of these papers which were sent to you at your business address on Thanksgiving Eve.

Very truly yours,

WMJ

WMJ:mf

AIR MAIL - SPECIAL DELIVERY

Enclosures

Copies with enclosures to:
Mr. William H. Lehmann
c/o Hyatt House
Lincolnwood, Illinois

Mr. Jay Pritzker
Pritzker and Pritzker
135 North La Salle Street
Chicago, Illinois 60602

Enclosed By	Mailed By	Delivered By	Delivery No.

0,

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W. F. JONES 11/29

Dear Mr. Digel

Attached is form letter we would like to send to Class A funds to secure the proceeds will be loaned by Class A to Schwabacher

[illegible]

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Date_____

2413-16

New York Stock Exchange
11 Wall Street
New York, New York 10005

Attention: Department of Member Firms -
Division of Finance

Gentlemen:

Accepting the suggestion of the New York Stock Exchange, I have conducted such investigation of Blair & Co., Inc. (the "Corporation") and of its participants as I consider desirable, appropriate and necessary under the circumstances, and I am aware of and am fully informed with respect to the proposed investment by the Corporation into Schwabacher & Co. My subordinated loan to the Corporation dated _____ is not being made in reliance upon the standing as a member organization of the New York Stock Exchange of either the Corporation or Schwabacher & Co. or on the Exchange's surveillance of the capital position of the Corporation or Schwabacher & Co.

I am familiar with the fact that the New York Stock Exchange has placed restrictions upon Schwabacher & Co. as set forth in its letters of [illegible]

I agree that the New York Stock Exchange has no responsibility to disclose to me information concerning the Corporation or Schwabacher & Co. which it may now have or at any time in the future may have or to protect my interest in the Corporation, and I will hold harmless the New York Stock, Exchange, its Special Trust Fund and each

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December 3, 1968

Pl's EXHIBIT 144
WITNESS BISHOP
REPORTER ARM
DATE 1-7-75

Schwabacher & Co.
100 Montgomery Street
San Francisco, California 94104

Attention: Mr. Albert E. Schwabacher, Jr.

Gentlemen:

Pursuant to our agreement yesterday, your firm is to inform us by December 15 whether you will merge with another firm or sell a number of branch offices. We expect the terms of any merger to be firm by that date, although the related documentation may not be complete. If you elect to sell branches, we will expect sale arrangements to be well in progress at that time.

Pursuant to Rule 417, your firm is directed to have an audit by an independent public accountant and to prepare answers to a financial questionnaire based on such audit as soon as possible, but in any event not later than December 31, 1968. We would consider some extension of this date if the auditor you choose could not meet this date but could do so in January.

Please advise us promptly that arrangements have been made with a national accounting firm with substantial stockbrokerage experience for such audit. Also, please advise us of the date as soon as it has been set.

Sincerely,

/s/ ROBERT M. BISHOP

Robert M. Bishop
Vice President

WEJ:RMB/jmd

000019

Schwabacher & Co.

INVESTMENT SECURITIES
100 MONTGOMERY STREET AT SUTTER
TELEPHONE 781-5000
SAN FRANCISCO

MEMBERS
NEW YORK STOCK EXCHANGE · AMERICAN STOCK EXCHANGE · PACIFIC COAST STOCK EXCHANGE
AND OTHER LEADING SECURITY AND COMMODITY EXCHANGES

December 12, 1968

Mr. Robert M. Bishop
New York Stock Exchange
Eleven Wall Street
New York, N. Y. 10005

PIFs EXHIBIT 147
WITNESS BISHOP
REPORTER ARM
DATE 1-7-75

Dear Mr. Bishop:

We have delayed answering your letter of December 3rd until we had something very positive to report.

Today we have agreed in principal to merge with Blair & Co., Inc. Enclosed is a letter of intent broadly outlining the terms.

Perhaps the single most important ingredient from Blair's standpoint in making this merger is the report of two Arthur Young auditors who spent several days in our office this week and gave Bill Lendman a really positive report on the progress of our back office since they were in 6 or 8 months ago.

In connection with Rule 417, as we discussed on the telephone, it will be impossible to get an accounting firm in here at the present time. Prior to our arrangement with Blair & Co., Inc., we had secured the promise that the Arthur Andersen people will be available and able to handle our audit as of the end of February 1969. They estimate it will require 30 people and it will be impossible for them to secure this staff prior to that time. We know you will agree with us that it is in everyone's best interest that we have a firm of Arthur Andersen's stature do this.

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Even though we have made arrangements to proceed on this basis, it is possible Blair may wish to have their accounting firm, Arthur Young & Co., proceed in another fashion, and I am sure Mr. Landman will be discussing this with the Exchange.

We will, of course, keep you advised of further developments. Meanwhile, please advise me if there is anything further you wish at this time.

Sincerely,

A. E. Schwabacher, Jr.

AESjr:mc
Encl.

Schwabacher & Co.

INVESTMENT SECURITIES
100 MONTGOMERY STREET AT SUTTER
TELEPHONE YU 2-3000
SAN FRANCISCO

December 13, 1968

Mr. Robert M. Bishop
New York Stock Exchange
11 Wall Street
New York, New York 10005

Plfs EXHIBIT 148
WITNESS BISHOP
REPORTER
DATE 1-7-75

Dear Bob:

The kindness and thoughtfulness of you and your associates in assisting us in Washington, D. C. is very much appreciated.

On behalf of my associates and myself, I want to thank you very much. If and when you come to San Francisco, I hope we have a chance to meet with you under slightly different circumstances.

Kind regards.

Sincerely,

AES[r:HJ

A. E. Schwabacher, Jr.

From: JAMES J. ETRO 1/29/69

Hank -

As you know, Schwabacher is due to merge with Blair on March 31, 1969.

I see no objection to the attached request that "capital" borrowing renewals be to March 31, 1969 or less than 6 months.

Do you agree?

Plfs EXHIBIT 156
WITNESS BISHOP
REPORTER C.I.R.
DATE 1-7-75

000023

2413-108

February 21, 1969

James W. Newquist, Esq.
Orrick, Herrington, Rowley & Sutcliffe
[illegible] Montgomery Street
San Francisco, California 94104

BLAIR & CO., INC.
Acquisition of Schmidbauer & Co.

Dear Jim:

The following is the information which you requested regarding the California Application for Qualification:

Question 12--Blair has had many transactions and agreements during the past three years between itself and its directors, officers and principal employees. These transactions include the sale of its stock to these people. However, inasmuch as Blair is not a publicly held corporation and the quotation of its securities is not allowed by the New York Stock Exchange and the American Stock Exchange, we should ask for waiver from having to answer this question.

Question 13--Blair has never issued any options or warrants.

Question 14--As to the Voting Common Stock, no person owns more than 10%. As to the Voting Preferred, Class A Stock, the total number of outstanding shares is 2,[illegible]. Albert P. Beringer owns 2000 shares (19.2%) and Stuart M. Beringer owns 2,[illegible] shares (19.2%). As to the Voting Preferred, Class B Stock, Albert P. Beringer owns 371 shares (70%), Stuart M. Beringer owns 160

Enclosed By	Mailed By	Delivered By	Delivery No.
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Shares (20%), and Bruce M. Doringer owns 53 Shares (10%).

Question 15--Inasmuch as Blair has approximately 91 officers and directors and a great percentage of them receive in excess of $30,000 per year, it would be advisable that we request waiver of this question because the amount of work involved in compiling this information would be immense.

Question 16(b)--Blair has never failed to pay any of its dividends on its debt securities and also its Preferred Stock. Although this does not answer the question proposed, why don't we try to see if they would accept it.

Question 18(C)--enclosed.

Question 20(D)--enclosed.

Question 20(I)--enclosed.

I want to apologize for not being able to answer directly each of the questions, but the time it would take for Blair to answer them would extend into the week of the 23rd. If the California Commission will not accept the information provided (some of this information may be on file with them in connection with Blair's broker-dealer registration), I will again ask Blair to try to compile the information.

Please call me if you have any questions regarding the above.

Very truly yours,

RTG

Robert J. Gillispie

RJG:mm

AIR MAIL
SPECIAL DELIVERY

Enclosed By	Mailed By	Delivered By	Delivery No.
			C60025

459

2/17/69

PLG EXHIBIT 159
WITNESS BISHOP
REPORTER GRM
DATE 1-7-75

Re: Bellaire

If the proposed capital limitation and the attached pricing levels are the same as those in Blair & Co. Inc. at 5/31/68. The fund would have $53,845 to invest in minimum requirements.

Note however, the first paragraph on the analysis sheet and the attached correspondence. Can we discuss this? If not, we will ask for application, as usual to maintain $500 net equity, adjusted for the payment of monthly capital computations and this item will be treated as agreed to today.

N. Bishop

I do not believe we can. The working capital computations, however, are made as of the date of the audit.

E.P.
2/17/69

000026

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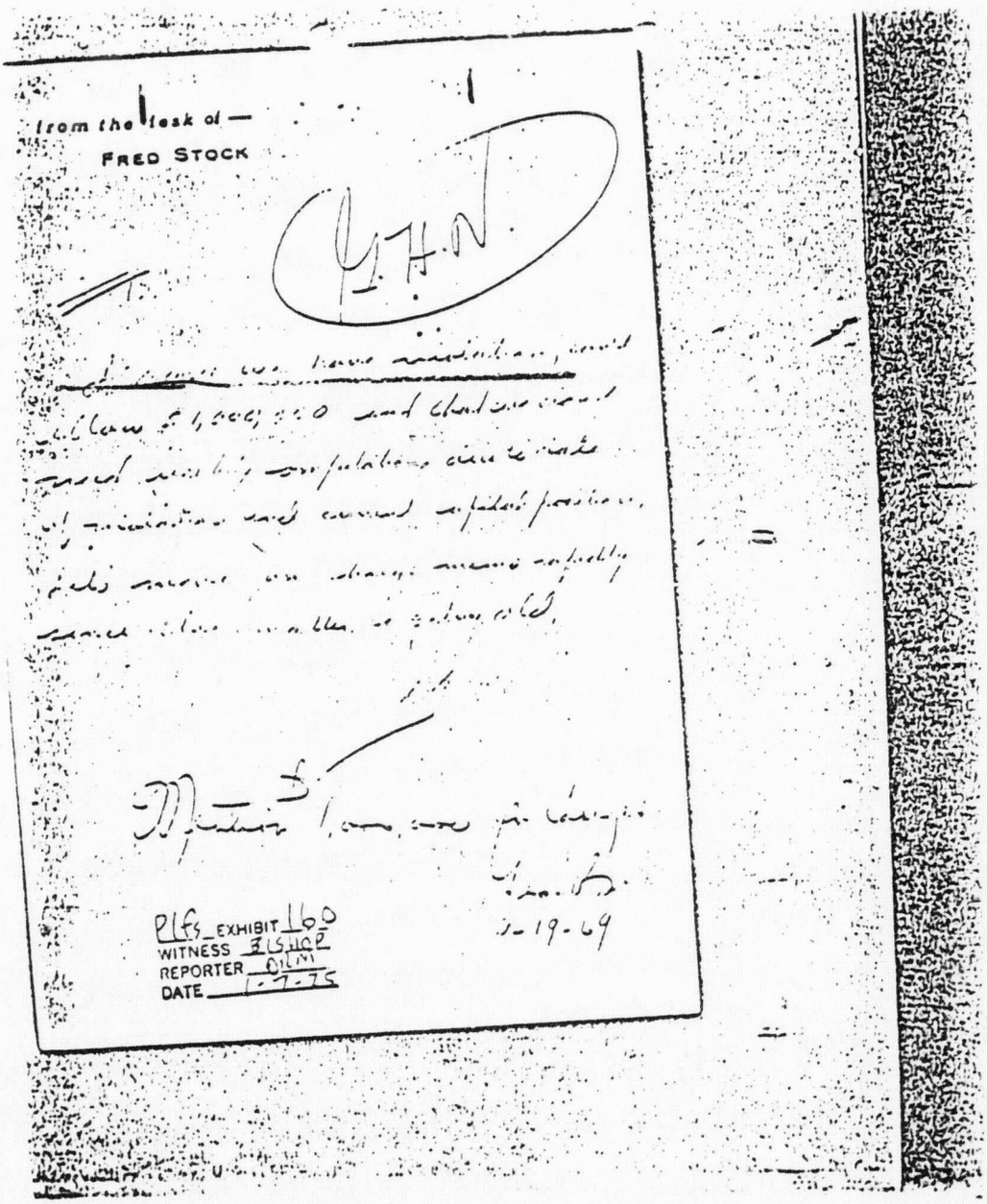

from the desk of—

FRED STOCK

Y.T.N.

[illegible] we have minimum [illegible]
allowance of $1,000.00 and that we need
need working capitalization similar
to minimum and normal capital positions.
This means an change means actually
need also in addition to [illegible]

Martin Lomasney for Executive
Committee
3-19-69

PLFS EXHIBIT 165
WITNESS ESHAP
REPORTER OLM
DATE 1-7-75

165

February 24, 1969

Blair & Co., Inc.
20 Broad Street
New York, N. Y. 10005

Pltfs EXHIBIT 162
WITNESS BISHOP
REPORTER O'BRIEN
DATE 1-7-75

Attention: Mr. James B. Ramsay, Jr.

Gentlemen:

The answers to the Regular Financial Questionnaire as of May 31, 1968, prepared by Arthur Young & Company, have been the subject of numerous letters, meetings and telephone conversations.

Originally the answers were analyzed to show a ratio of 2.35% with $420,382 needed to meet the minimum capital requirement. The net capital was computed to be $1,037,444. This analysis was arrived at without charging off the entire security valuations of $553,296.

Based upon the additional information submitted as an amendment to the original questionnaire, we have arrived at an adjusted ratio of 2.47%, and net capital of $1,303,455. Based on aggregate indebtedness of $53,741,078, the minimum capital requirement was $1,017,430. An amount of $285,975 was needed to meet minimum capital requirements.

The adjusted capital position is based on information contained in letters from your corporation dated November 5, 1968 and January 13, 1969, and letters from Arthur Young & Company dated December 4, 1968, and January 22, 1969. In the adjusted capital position favorable consideration was given to all matters contained in the letters except the matters numbered 1, 2 and 3 contained on Pages 2 and 3 of the letter dated November 5, 1968 and for the matters number 1 (other items) on Pages 1 and 2 of the letter dated January 22, 1969.

C00028

[redacted]

BEST COPY AVAILABLE

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The violation of Rule 325 at May 31, 1968 may be the subject of a report to the Advisory Committee of the Board of Governors of this exchange. We would appreciate your furnishing us with a full written explanation of the circumstances under which the violation of Rule 325 occurred. Your explanation will be made a part of the report covering the violation which may be submitted to the Advisory Committee.

Until further notice, we ask that you agree to maintain net capital of at least $25,000 in excess of the minimum requirement or an amount which will provide a ratio of aggregate indebtedness to net capital of not more than 1500%, whichever is the greater dollar "cushion".

Very truly yours,

C. H. Kirman
Manager

Cihlewaan/eb

an excellent "growth" issue...

especially today, as our merger with Schwabacher & Co. takes effect

Pl's EXHIBIT 100
WITNESS [illegible]
REPORTER [illegible]
DATE 1-6-75

On January 31st, we issued a year-end report pointing out the remarkable differences between our organization in 1963 and Blair & Co., Inc. as it exists today. We believe that some of these comparisons are particularly appropriate to i light the importance to the investing community of the new Blair & Co. as we expand today into a coast-to-coast investr banking and stockbrokerage complex with the addition of the offices, facilities, business and—most important—the pe of the well-known San Francisco-based firm of Schwabacher & Co., which now becomes the Western Division of Blair &

- Since 1964, our volume of business has increased 500%, and we expect that volume to double in 1969 with the addition 15 Schwabacher offices in California, Utah, Idaho, Nevada and Hawaii.
- At the end of 1964, we had 365 employees. Today, we have more than 1,000, and with the Schwabacher staff we will than 1,800.
- In 1968, the dollar volume of securities distributions managed or co-managed by Blair & Co. increased by some 1964 total. With the addition of Schwabacher's investment management team, and their familiarity with Western finance, we expect these statistics to show even greater growth.
- We had 16 offices in 1964. Yesterday we had 31. Today we have 47 offices to serve individual, institutional and cor investors from Honolulu to Boston.

Of course our merger with Schwabacher does more than just expand our statistics. It adds important services and ca ilities. For example, we now have more floor brokers to execute transactions. We are now members of more sec exchanges. Our communications facilities are being greatly expanded. Our research capabilities will be broadened ularly in the rapidly expanding area of Western business, which is so well known to the Schwabacher research staff. W forward to the cross-pollenization of ideas as Schwabacher partners become Blair officers, adding importantly to our utive depth.

In short, we believe we have made a giant step forward in our program of qualitative growth. We offer you more, a proved, facilities and services—and the staff to implement them.

For all of these reasons, we think that stock in Blair & Co. would be an excellent "growth" investment...if it were a to the public. It isn't, regrettably, although a growing number of our employees have exercised their privilege to Blair & Co. stockholders. But while our stock isn't for sale, investors are invited to make the fullest possible use of ou services, our growth-oriented research department and our service-oriented personnel.

May we be of service to you? To put our growth-oriented organization to work for you, visit or telephone the Manager of the Blair office nearest you, or write to President, Blair & Co., Inc., Department (I.S.), 20 Broad Street, N N.Y. 10005.

BLAIR & CO., INC.

Founded 1890

Member New York Stock Exchange and other principal exchanges

WESTERN DIVISION: SCHWABACHER

Blair & Co., Inc. Offices in Abington, Pa.; Albany, N.Y.; Appleton, Wisc.; Atlanta, Ga.; Augusta, Maine; Boston, Mass.; Chicago, Ill.; Denville, N.J.; Eau Claire, Wisc.; Hewlett, L.I., N.Y.; Marshfield, Wisc.; Miami Beach, Fla.; Minneola, L.I., N.Y.; Minneapolis, Minn.; New Haven, Conn.; New York, N.Y. (277 Park A Avenue

Schwabacher & Co.

INVESTMENT SECURITIES
100 MONTGOMERY STREET AT SUTTER
TELEPHONE SUTTER 1-0200
SAN FRANCISCO

MEMBERS
NEW YORK STOCK EXCHANGE · AMERICAN STOCK EXCHANGE · PACIFIC COAST STOCK EXCHANGE
AND OTHER LEADING SECURITY AND COMMODITY EXCHANGES

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MONTEREY
OAKLAND
PALO ALTO

NEW YORK
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SALT LAKE CITY
SAN JOSE
SANTA BARBARA
SANTA ROSA
STOCKTON
YUMA

Pltf's EXHIBIT 157
WITNESS Bishop
REPORTER ARM
DATE 1-7-75

February 26, 1969

Now possible to send statement as
of same kind of balance sheet
required on standing procedure
S

Mr. Robert M. Bishop
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Bishop:

I received a communication from Mr. George Beliakow, Assistant Director of the Department of Member Firms, noting that we had not yet filed a copy of the Financial Statement to Customers as required by Rule 417. This financial statement, of course, would be based on the audit of August 30, 1968. Because of our pending merger with Blair & Co., Inc., I would like to request, on behalf of the firm, a waiver of this requirement. It is our intention to make available to our customers the financial statement resulting from the audit of the merged company within the requisite time specified. I hope this will meet with your approval. If not, perhaps we can make arrangements with Blair & Co., Inc., to submit a pro forma financial statement of the successor company.

Please advise me, if you will, of your thoughts on this matter. Thank you.

Very truly yours,

Richard W. Muir
Managing Partner

RWM:go

cc: Mr. George Beliakow

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NEW YORK STOCK EXCHANGE

ELEVEN WALL STREET

NEW YORK, N.Y. 10005

ROBERT M. BISHOP
VICE PRESIDENT
SECRETARY
SECRETARIAT OF MEMBER FIRMS

March 5, 1969

Schwabacher & Company
100 Montgomery Street
San Francisco, California 94104

Attention: Mr. Richard W. Muir

Gentlemen:

Thank you for your letter of February 26, 1969.

Non-compliance with Rule 419 with respect to the financial statement based on the audit as of August 30, 1968, was considered in disciplinary proceedings brought against your firm. We note your intention to make available to customers the financial statement resulting from the audit of the merged company, Blair & Co., Inc. and Schwabacher & Co., within the requisite time specified.

Sincerely yours,

Robert M. Bishop

OWN YOUR SHARE OF AMERICAN BUSINESS

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governor, officer, trustee or employee of said Exchange or Fund for any claim with respect to the matters referred to herin.

Very truly yours,

_____

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Schwabacher
DIVISION OF BLAIR & CO., INC.

March 10, 1969

To: Mr. W. M. Landman

From: R. W. Muir

Subject: Rule 419 - Financial Statements to Customers

As you will recall, I received a letter from the Department of Member Firms on January 20, 1969, requesting a copy of the Financial Statement to be made available to customers based on our audit of August 30, 1968. On February 26 I wrote to Mr. Bishop requesting a waiver of this requirement pending an audit of the merged firm anticipated in March or April, 1969.

I am attaching hereto Mr. Bishop's reply which indicates that our non-compliance with Rule 419 was considered in the disciplinary proceedings previously filed and seems to indicate that our making available the Financial Statement from the resultant firm would be satisfactory under the circumstances provided that it is within "the requisite time specified".

RWM:go

cc: Mr. J. B. Ramsey, Jr.
Mr. R. J. Lucas, Orrick, Herrington, Rowley & Sutcliffe

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ARTHUR YOUNG & COMPANY

120 MONTGOMERY STREET
SAN FRANCISCO 94104

May. 2, 1969

Mr. Robert H. Bishop
Vice President
New York Stock Exchange
11 Wall Street
New York, New York 10005

PLS EXHIBIT 171
WITNESS BISHOP
REPORTER ARM
DATE 1-7-75

Dear Sir:

In accordance with your instructions, we visited Schwabacher & Co., a member firm of the New York Stock Exchange, and as of February 28, 1969 performed the limited procedures set forth in the New York Stock Exchange Special Operations Questionnaire Review Program. Since these procedures do not constitute an examination made in accordance with generally accepted auditing standards, we do not express an opinion as to the financial position of the member firm at February 28, 1969, the results of its operations for the period then ended or the adequacy of its accounting system, internal accounting controls or procedures for safeguarding securities. The member firm's answers to Questionnaire items 4b, 4c, 8, 10, and 13 are not within the scope of the Review Program. Furthermore, the limited procedures described in the Review Program would not necessarily disclose all inaccuracies in the other answers.

Based on the procedures performed and inquiries made, as set forth in the Review Program, we have prepared the enclosed memorandum summarizing various matters which came to our attention during this review. Procedures not discussed in the memorandum did not uncover any errors or ommissions.

Yours very truly,

Arthur Young & Company

cc: Schwabacher & Co.
Mr. L. Holvenstot
Mr. M. L. Peterson

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11 WALL STREET
NEW YORK, N.Y. 10005

Blair & Co.

May 23, 1969

PIG EXHIBIT 176
WITNESS SISHOP
REPORTER ADM
DATE 1-7-75

Mr. W. N. Olson, Partner
Arthur Young & Company
277 Park Avenue
New York, New York 10017

Dear Mr. Olson:

Your request to conduct audits of Blair & Co. in two separate stages by auditing first the Schwabacher Division and a number of months later auditing the Division which was formerly Blair & Co. is approved for 1969.

In accordance with our discussions you are advised that the New York Stock Exchange will require that the Division of Blair & Co. not being audited will, as of the same date of the Division being audited, prepare answers to a Special Financial Questionnaire of the New York Stock Exchange. We also request that the answers to both Divisions be presented in a combined format if this does not prove to be impracticable.

The Statement of Financial Condition for the total Blair & Co. entity is to be presented in a format so that the separate divisions as well as combined figures are shown.

This permission to audit the Blair & Co. entity as two separate divisions and at different times for 1969 is granted as an exception to Exchange rules and policies and applicable only under the unique circumstances surrounding this particular merger and should not be construed as a precedent for a similar request for 1970 or subsequent years.

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We have discussed your request with Mr. Andrew Barr, Chief Accountant of the Securities and Exchange Commission who has orally advised that the proposed auditing procedures for 1969 will be acceptable in this particular instance.

Very truly yours,

/s/ Robert M. Bishop

RMB/LW:McCHESNEY:cmr

Robert M. Bishop,
Vice President

Blair & Co., Inc.

The accompanying statement of financial condition of Blair & Co., Inc. at September 26, 1969 represents a combination of the respective statements of financial condition of its two divisions, Blair, formerly its only operations, and Schwabacher, acquired during the year.

We have examined the statement of financial condition of Blair Division of Blair & Co., Inc. at September 26, 1969 (not shown separately). Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances, except that, as explained in Note 1, the scope of our examination was restricted to the books and records of Blair Division and did not include a determination as to whether or not there were financial transactions recorded in the books and records of Schwabacher Division which affected its Blair Division.

In our opinion, except for such adjustments, if any, as may have resulted without the limitation of our examination described above, and subject to the possible effect of the liabilities and accountabilities of Schwabacher Division on the financial condition of Blair Division, the statement of financial condition mentioned in the preceding paragraph presents fairly the financial condition of Blair Division of Blair & Co., Inc. at September 26, 1969, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

The statement of financial condition of Schwabacher Division at September 26, 1969 (not shown separately) was prepared by the Company inasmuch as we did not make an examination of it in accordance with generally accepted auditing standards nor of any of its financial transactions since June 27, 1969 (referred to below), we express no opinion thereon. We did examine a statement of financial condition (as set forth in its Answers to Financial Questionnaire) of the Schwabacher Division at June 27, 1969 and reported thereon under date of August 15, 1969. That examination was made on the same basis and our opinion was qualified with respect to the same matters as described above for the Blair Division.

Inasmuch as we did not make an examination in accordance with generally accepted auditing standards at a single date for both Blair Division and Schwabacher Division whose individual statements of condition are combined in the accompanying statement of financial condition of Blair & Co., Inc. at September 26, 1969, as explained above, we are unable to express an opinion thereon. It is our opinion, however, that the combined statement has been properly compiled.

Arthur Young & Company

December 5, 1969

"We enter our 80th year with confidence..."

The period of adjustment that followed our merger with Schwabacher & Co. has just about ended and many benefits—to our company and to our clients—are now becoming apparent.

Our Research Department has been expanded, our Portfolio Review Department has been established, we have made a number of important changes in our computer-oriented Operations Department to improve the many essential services it provides, our Investment Banking and Underwriting Department has been expanded and we have established a new Options Department.

Blair & Co. is now functioning as one firm whose primary objective is to provide services reflecting the highest professional standards. We enter our 80th year with confidence that we will meet this challenge.

Oliver D.G. Vanderbilt
Chairman of the Board

James B. Ramsey, Jr.
President

BLAIR & CO., INC.

Offices coast to coast

Our 80th year of service to investors

FINANCIAL REPORT as of September 26, 1969

BLAIR & CO., INC.

Founded 1890
Member New York Stock Exchange
And other principal exchanges

Offices coast to coast

20 Broad Street, New York, N.Y. 10005 (212) 344-4000
CABLE ADDRESS: OCRIALB

BLAIR & CO., INC.
STATEMENT OF FINANCIAL CONDITION
September 26, 1969 (*)

ASSETS	
Current assets:	
Cash on hand and in banks	$ 3,425,522
Cash in banks segregated under the Commodity Exchange Act	10,582
Certificates of deposit	1,400,000
Clearing funds and other deposits	289,710
Receivable from other brokers or dealers against delivery of securities and on open commodity accounts	12,169,913
Receivable from customers on secured accounts and current cash transactions	$3,312,293
Securities owned by Firm—at market value:	
U.S. Government, state and municipal	3,422,735
Other	3,565,114
Demand notes contributed as capital—collateralized by cash and securities	22,022,000
Securities contributed as capital under subordination agreements—at market value	1,009,621
Miscellaneous current assets	840,049
Total current assets	101,467,539
Other assets:	
Exchange memberships—at market value	1,776,950
Furniture, fixtures and leasehold improvements (less depreciation and amortization)	2,595,639
Deferred charges and prepaid expenses	517,689
Miscellaneous	1,701,442
	$108,059,259

LIABILITIES	
Current liabilities:	
Borrowings on securities—bank loans	$ 42,169,000
Payable to other brokers or dealers against receipt of securities	12,308,328
Payable to customers:	
Secured accounts and current cash transactions	11,238,978
Free credit balances	14,530,885
Equities in commodity accounts	94,413
Securities sold by Firm, not yet purchased—at market value	985,288
Dividends and interest payable	698,238
Other accrued expenses and accounts payable	3,477,084
Total current liabilities	85,502,219
Capital and subordinated borrowings (Notes 2 and 3):	
Subordinated borrowings (net of $3,908,989 receivable from owners of business acquired) (Note 1)	22,092,278
Capital stock and surplus less deficit	464,762
	22,557,040
	$108,059,259

(*) Audited to the extent indicated in report of certified public accountants. See accompanying notes

NOTES TO STATEMENT OF FINANCIAL CONDITION
September 26, 1969

Note 1.
Effective February 28, 1969, Blair & Co., Inc. acquired the business (certain assets subject to certain liabilities) of another member firm (now Schwabacher Division). Under certain provisions of a purchase and escrow agreement covering the acquisition, an account receivable was established for the excess of liabilities assumed over assets acquired and for registered subordinated debenture notes and common and preferred stock issued to owners of the business acquired, most of whom became officers and/or directors of Blair & Co., Inc. At September 26, 1969, after adjustments to that date, the amount of the receivable was $3,908,989; this amount is subject to further adjustment. The Company anticipates that the receivable will ultimately be satisfied by the proceeds of liquidations of subordinated secured demand note collateral contributed by certain of the parties. Accordingly, this amount has been deducted from total subordinated borrowings in the accompanying statement of financial condition.

In order to facilitate an orderly combination of the businesses, accounts relating to the business acquired were examined by certified public accountants at June 27, 1969 and those of Blair Division at September 26, 1969 (see Report of Certified Public Accountants).

At September 26, 1969, Blair Division's assets, liabilities, subordinated borrowings and capital stock and surplus less deficit aggregated $58,294,158 (including $3,610,253 net receivable from Schwabacher Division which has been eliminated in the accompanying statement), $41,957,498, $12,881,065 and $3,455,595, respectively.

Note 2.
Capital stock and surplus in the accompanying statement of financial condition is shown after the deduction of $475,000, the book basis of the Company's investment securities which may require registration under the Securities Act of 1933 in order to make them marketable in the ordinary course of business. In the opinion of the Company's management, these securities currently have a value in excess of their book basis.

Note 3.
Subordinated borrowings ($22,517,767 in the accompanying statement), of which $20,810,000 has been borrowed from stockholders, includes $1,400,000 cash which was repaid in November 1969 and $250,000 cash and securities with an approximate market value at September 1969 of $1,700,000, which are scheduled to be repaid or returned at various dates through April 1970.

The Company has repurchased certain of its capital stock for $85,000, of which $45,000 was transferred to subordinated borrowings. Effective October 31, 1969, capital stock is to be repurchased for 8% subordinated notes (subordinated borrowings). Notes aggregating $1,200,000 due in October and November 1970 have been or are in the process of being issued in connection with repurchases since that date. In addition, convertible subordinated debenture notes (subordinated borrowings) in the amount of $250,000 were issued for cash subsequent to September 26, 1969.

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MEMORANDUM

February 13, 1970

To: ALL SCHWABACHER & CO. PARTNERS
WHO SIGNED THE MERGER AGREEMENT
WITH BLAIR & CO., INC.

From: Mr. A. E. Schwabacher, Jr.

The attached letter was sent to Blair & Co., Inc. on January 26, 1970. To date it has not been formally acknowledged.

This is being sent to you for your information.

Best regards.

AESJr:gs

Attachment

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Schwabacher
DIVISION OF BLAIR & CO., INC.
INVESTMENT SECURITIES
100 MONTGOMERY STREET AT SUTTER
415-781-5600
SAN FRANCISCO 94104
MEMBERS
NEW YORK STOCK EXCHANGE · AMERICAN STOCK EXCHANGE · PACIFIC COAST STOCK EXCHANGE
AND OTHER LEADING SECURITY AND COMMODITY EXCHANGES

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PALO ALTO

NEW YORK
SACRAMENTO
SALT LAKE CITY
SAN JOSE
SANTA BARBARA
SANTA ROSA
BOISE
NAPA

January 26, 1970

Via Air Mail Registered
Return Receipt Requested

Blair & Co., Inc.
20 Broad Street
New York, New York 10005

Attention: Mr. James B. Ramsey, Jr.

Dear Sirs:

The Agreement dated February 17, 1969, between Blair & Co., Inc. Schwabacher & Co., and the partners of the latter, provided that Blair would cause an audit of Blair, including an audit of the affairs of Schwabacher, to be made by Arthur Young & Co. "as soon as practicable" following the closing date. The purpose of the audit was to enable the in-house financial statements, attached as exhibits to that Agreement, to be "revised as of February 28, 1969".

Now, almost eleven months after February 28, 1969, the date of closing, no such revised financial statements as of that date have, to our knowledge, been prepared in respect either to Blair or to Schwabacher. Accordingly, request is hereby made that such revised statements be furnished to us forthwith.

The long delay in furnishing us with such revised statements has precluded the determination of the obligations of the Schwabacher partners to Blair under Paragraph 19, or the adjustments to which the Schwabacher partners are entitled by reason of any difference between the equity of Blair at date of closing pursuant to its in-house figures, and such equity determined in accordance with the revised statements. To the extent that the affairs of Blair have deteriorated in recent months and after a reasonable time subsequent to date of closing, the rights of the Schwabacher partners to have their obligations settled may have been materially prejudiced and such rights as the Schwabacher partners may have in this particular are specifically reserved.

In order that we may proceed to determine the respective rights of Blair

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Schwabacher
DIVISION OF BLAIR & CO., INC.

and of the Schwabacher partners, we not only require financial statements as of the closing date but also request:

(a) A statement of Blair based on the September audit figures retroactively adjusted to June 27, 1969, the date of the Schwabacher audit, and

(b) Current financial statements of Blair, all in conventional form.

This letter is addressed to you by the undersigned on behalf of the Committee of the Schwabacher partners named in the Agreement, as well as all other Schwabacher partners. An early reply is urgently requested.

Very truly yours,

Albert E. Schwabacher, Jr.

AESJr:mc

cc: Clarence E. Heller
William M. Cahn, Jr.

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ONE CHASE MANHATTAN PLAZA
NEW YORK N.Y. 10005
212 HANOVER 2-3000

July 2, 1970

Dear Sirs:

We have been retained by Messrs. Clarence E. Heller and Charles F. Lowrey, holders of Subordinated Debenture Notes issued by Blair & Co., Inc. ("Blair"), to act as their New York counsel in connection with possible claims by them against Blair and to advise them as to their legal rights with respect to a possible sale of the business of or dissolution of Blair.

We have been advised by Mr. Heller and his California counsel, Messrs. Heller, Ehrman, White & McAuliffe, that, on the limited evidence available to them, the Board of Directors of Blair should immediately investigate to determine whether Mr. Oliver Dee. Vanderbilt is obligated to repay to Blair funds allegedly received by him in payment of Subordinated Debenture Notes held by Mr. Vanderbilt. We have been advised that it would appear that Blair has made payments to Mr. Vanderbilt with respect to Subordinated Debenture Notes as follows:

April 11, 1969	$500,000
June 12, 1969	300,000
July 3, 1969	800,000
Nov 7, 1969	700,000
Nov. 28, 1969	700,000

We have further been advised that the Subordinated Debenture Notes on which such payments were allegedly made contain language somewhat as follows:

> "The registered holder agrees that any payments made to him while Blair is insolvent will, upon written notice from the corporation within one year be subject to return to the corporation."

Since neither our clients nor ourselves are in a position to determine whether Blair has a valid claim against Mr. Vanderbilt with respect to the above matter, we hereby

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(SEC)

request, on behalf of our clients, the Board of Directors of Blair to make an immediate investigation of all facts and legal principles with respect to such claim and to advise us immediately as to any steps which have been taken to enforce such claim or, if it is determined not to take any such steps, the reasons for not acting. In view of the important time considerations here, we request that such investigation by the Board be conducted as quickly as possible.

Mr. Heller has advised us that Mr. James B. Ramsey, Jr., President of Blair, would give us regular reports and information on Blair's current financial condition, its possible reorganization, proposed sales or closings of branch offices and other matters material to holders of Subordinated Debenture Notes of Blair. Despite several attempts by this office to reach Mr. Ramsey, we have to date not been contacted in any way by Mr. Ramsey or other representatives of Blair since Mr. Heller retained our services.

We note that the Subordinated Debenture Notes issued to our clients provide that such Notes "shall become and be immediately due and payable if . . . [Blair] shall become insolvent . . . ." We have been asked by our clients to consider whether their Subordinated Debenture Notes have, pursuant to such provision, now become immediately due and payable, thereby giving them such legal rights as may flow from Blair's failure to make payment thereon, including any rights under Federal and state insolvency laws.

We are looking forward to a prompt response to the questions contained in this letter. Please address all correspondence and telephone communications to Mr. Samuel C. Butler of this office.

Very truly yours,

Cravath, Swaine & M

The Board of Directors,
Blair & Co., Inc.,
20 Broad Street,
New York, N.Y. 10005

XX

Copy to Mr. Robert M. Bishop, New York Stock Exchange
Mr. Joseph C. Daley, Mudge, Rose, Guthrie & Alexander
Mr. Sam Harris, Strasser, Spiegelberg, Fried & Frank

92d Congress, 1st Session - - - - - House Document No. 92-231

STUDY OF UNSAFE AND UNSOUND PRACTICES OF BROKERS AND DEALERS

REPORT AND RECOMMENDATIONS

OF THE

SECURITIES AND EXCHANGE COMMISSION

(Pursuant to Section 11(h) of the Securities Investor Protection Act of 1970)

DECEMBER 1971

Printed for the use of the Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE
71-109 WASHINGTON : 1971

Meanwhile the "Paper Crunch" continued escalating costs even further as processing and accounting errors were mounting causing firms to undertake additional expenses in an attempt to resolve these errors.

However, even the attempt to resolve the problem through the acquisition and installation of A.D.P. systems caused complications as many firms abandoned existing systems for the new A.D.P. systems which were unproven. Indeed, a number of brokerage firm failures are directly attributable to conversions to A.D.P. systems which were not properly planned or implemented.

Unfortunately the downturn in trading volume was not a cure to the operational problems of the "Paper Crunch." The downturn in trading volume and securities prices during the 1969–70 "Bear Market" which was supposed to allow firms to "catch up" on their paperwork processing resulted in a financial crisis which ultimately caused many firms to fail. Many firms which undertook substantial expansion during the Bull Market and contracted for additional personnel and equipment to solve the "Paper Crunch" had substantial ongoing overhead expenses, but with the decreased trading volume revenues were not sufficient to meet their costs. Further, as many firms were thinly capitalized, with little equity capital, and further were capitalized with securities whose values were now rapidly declining, these firms did not have sufficient resources to meet the many financial demands being made on them. Thus, the lack of adequate permanent capital coupled with the shrinking capital provided by securities whose values were declining rendered many firms unable to survive the financial problems caused by decreasing revenues and increasing expenses during the Bear Market.

The major self-regulatory organizations which have responsibility for supervising the financial and operational condition of their members were equally unprepared. In the first instance, the self-regulatory organizations had not expected the surge in trading volume, nor had they adequately planned or prepared for the development of sophisticated industry-wide systems to handle this volume. The systems which were utilized in 1968 were essentially the same as those utilized in 1960. The operational systems of the individual firms, particularly certain of the large "retail" firms, were not adequate for their purposes. Only when the operational problems reached crisis proportions did the self-regulatory organizations act decisively to improve operational systems.

Further, in many instances, the self-regulatory organizations were reluctant to take decisive action such as suspending a firm.

Apparently, the self-regulatory organizations felt that if the firms were given sufficient time and if market conditions could improve, these problems, which were often viewed as "temporary" or "cyclical" rather than structural, would be resolved. Unfortunately, this approach was not always successful.

While under a capitalistic system some business failures are inevitable, and although it is not our intent or purpose to prevent inevitable failures, it is nevertheless our objective, in the event of a brokerage firm failure, to provide maximum protection for customer funds and securities. The recent SIPC legislation will greatly assist in the realization of this objective. However, it is not the total solution

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recently announced the formation of an industry-wide task force to deal with qualifications of and training standards for securities industry personnel at various levels of operations. The Commission anticipates that the work of this group will provide suggestions for further improvement of the system.

9. Changes in entry standards

The statutory scheme governing Federal registration of brokers and dealers is premised on a concept of relatively free entry into the securities business, with only minimal capital requirements and rudimentary standards of professional competency. Recent proposals by the Commission to increase the capital requirements and to insure that adequate arrangements have been made with respect to personnel, facilities and financing, described earlier in this report, are steps toward increasing entry standards for brokers. While the Commission has proposed no new standards with respect to professional competency, the Commission's Office of Policy Research is currently engaged in an analysis of the characteristics of firms entering the securities business which will serve as the basis for a review of broker-dealer registration and deregistration requirements. If this study illustrates that newly formed broker-dealers engage in those types of business in which significant amounts of customers' funds and securities are at risk, it may be necessary in the public interest to impose additional entry standards, at least on those broker-dealers proposing to engage in these types of activities. Furthermore, the work of the securities industry task force, described at the close of the previous section, should also yield beneficial results in upgrading the quality of new firms.

10. Improved disclosure to investors of broker-dealers' financial and operational condition

Customers of most brokerage firms were given little information as to the financial and operational condition of the firms to which they entrusted their funds and securities, even though generally monies and securities left with the firm would be at risk in the case of serious financial difficulty. Broker-dealers in most cases preferred to hold information of this type closely, while regulatory and self-regulatory agencies required little or no information to be furnished to customers. The recently proposed amendments to Rule 17a–5 under the Exchange Act [46] represent the Commission's response to this problem and would appear to go a long way toward providing meaningful information to customers. After the Commission has made a careful review of the comments submitted in connection with the above proposal, it will, if warranted, adopt the rules, with any modifications deemed appropriate.

Self-regulatory bodies in the past often had information in their possession, but not made available to the public, indicating that members were in violation of the agency's capital or financial protection rules or that they were materially deficient in meeting segregation or record keeping requirements. On some occasions, disciplinary actions taken against members by self-regulators were not disclosed. The Com-

[46] Exchange Act release No. 9404, Dec. 3, 1971.

mission's adoption of Rule 17a-11 alleviates this problem in part. However, the exchanges and NASD should adopt a program ensuring full and prompt disclosure of all disciplinary action relating to members' financial and operational condition. One suggestion is if the self-regulatory body determines that a member is failing below minimum standards, it formally notify the member of the violation, directing prompt corrective measures. If compliance is not obtained within some prescribed period, the agency's adverse findings should be disclosed to the public, and further prompt remedial action taken. Exemptions would be permitted in only limited circumstances where a specific finding was made that the public interest required a delay in making such information public.

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Furthermore, unresolved short stock record differences, when compared to net worth (exclusive of subordinated borrowings) demonstrate the potential exposure for certain firms, because, in the event these differences are incapable of being resolved, they develop into liabilities. Table V indicates that unresolved stock record differences at some firms in 1969 were at a dangerous level. In the cases of Blair & Co. and Dempsey-Tegeler the unresolved short stock record differences were twice net worth. Hayden, Stone, Goodbody and duPont experienced levels less than reported net worth, but even at those levels, each firm would have been close to insolvency in the event their short stock record differences were all incapable of being resolved.

TABLE V

Firm	Net worth 1969	Short stock record difference 1969	Percentage of net worth
Merrill Lynch	$791,831,795	$9,259,360	1.21
Bache	81,923,737	7,530,000	4.64
duPont	72,698,795	8,759,945	20.76
Goodbody	76,402,019	30,000,000	66.10
Dean Witter	18,417,886	2,743,757	14.90
Walston	13,795,185	4,550,632	19.12
E. F. Hutton	29,119,410	2,540,000	8.79
Paine Webber	34,383,625	2,613,150	6.76
Hayden, Stone	10,866,405	8,500,000	67.34
Blair	1,430,416	2,904,394	201.92
Dempsey-Tegeler	5,641,443	17,863,694	311.66

Not only was the magnitude of short stock record differences alarming, but the failure of the firms to resolve these differences led to aged differences. A memorandum to the Commission dated September 21, 1970, from the Division of Trading and Markets outlines the effect of aged short stock record differences.

Aged stock record differences indicate that a firm is not maintaining its books and records in a current manner. They evidence a cavalier attitude toward customers, in that the majority of the complaints which the firm receives is due to non-delivery of customers' stock and money, which is often traceable to faulty customer account records. More important, continued failure to research old stock record differences raises the possibility that a firm is deliberately trying to evade its responsibility to customers to have their securities on hand and in segregation. That is, where a firm has a large excess of short differences over long differences, a firm is really making use of customers' securities amounting to at least the excess—and failure even to attempt to clean up these differences for a whole year after the audit suggests that the firm might be financially unable to end this improper practice.

The practice on the part of some firms of carrying unresolved short stock record differences on their books for extended periods without buying them in, represents particularly, a gamble in a rising market because the exposure increases by procrastination. Despite this gamble, several firms did engage in this practice. For example, Francis I. duPont, Glore Forgan Inc. represented to the Special Committee of the Board of Governors of the NYSE which deals with troubled firms that it placed the resolution of short stock record differences at the bottom of its list of priorities.[11] At the time of the 1970 audit the firm was still carrying short record differences carried over from its 1969 audit.[12] A subordinated loan by the NYSE to Hayden, Stone was conditioned on Hayden, Stone's buying in its aged differences, some of which were three years old.[13]

The Commission charges the full amount of short stock record differences to net worth in computing net capital under Exchange Act Rule 15c3-1. This same procedure was followed by the NYSE under its net capital rule, Rule 325, until May 6, 1969. Thus, an internal NYSE memorandum to the staff dated May 5, 1969 stated:

Re Treatment of unlocated short differences

Effective with analysis of answers to financial questionnaires made on and after May 6, 1969, we will reverse our previous method and compute original Capital positions without any deduction for unlocated short differences.

Immediately after the presentation of the original capital position on the face of analysis an adjusted capital position will be shown giving effect to deduction of short differences and a notation relative thereto.

The form of the notation relative to the adjusted capital position should be substantially as follows:

"The market value of Unlocated Short Differences reported in the answers in the amount of $_____ have not been deducted from the above net capital. If these values had been deducted the capital position would be as follows: Net capital, $_____; ratio, ____%."

A similar notation should appear in visit reports in connection with capital positions at answer dates and current dates when applicable. If the answers being reviewed in a field visit were analyzed on the old basis, capital position in visit reports must be stated in accordance with new method.

L. W. McChesney.

This policy of the NYSE was stated publicly by an Exchange official at a panel discussion on June 23, 1969. The record of the panel discussion reveals this Exchange's position with regard to short stock record differences:

Our policy is and has been for sometime in the past one whereby we compute capital without writing off any short security differences. We made a capital computation on that basis.

We then adjust that capital computation to reflect what the capital position would be if we wrote off the short security differences.

These two positions are then referred to the administrative end of the Exchange, the Department of Member Firms and its coordinators, and there is a work-out between the Stock Exchange and the member firm on the resolving of the details as it applies to their capital."

The effect of this change in procedure and the "work-out" between the Exchange and the member firm was to "sweep under the rug" a highly dangerous element. Retail houses, were particularly affected adversely by this approach. Table VI shows the net capital ratios computed before and after deduction of short stock record differences from net worth. In firms that failed and had to be taken over, the matter of being in compliance with the net capital rule depended upon the difference between charging and not charging the firm for such differences.

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[11] Memorandum to the Commission September 21, 1970. "Considerable discussion centered on the firm's stock record differences. The officials stated that they had so many problems last year that they had to set an order of priorities for dealing with them, and that they place the resolution of stock record differences at the bottom." The fruits of this policy were that when the firm was taken over by the Perot interests, $55 million were needed to put the duPont operation on a going basis. See Washington Post, Aug. 21, 1971, p. C7.

[12] Memorandum to the Commission, October 29, 1970. "At present, it appears that [stock record] differences dating back to 1969 amount to $2,830,000 long and $9,832,000 short."

[13] June 25, 1970, agreement between Hayden, Stone and the NYSE.

[14] The statement was made at a panel conference at New York University on the subject of the "surprise audit" by independent public accountants.

483

TABLE VI

Firm	Ratio of aggregate indebtedness to net capital (percent)	
	Before charging short stock record differences	After charging short stock record differences
Merrill Lynch	928	1,308
Bache	1,123	1,189
duPont	1 $1,342,517	1 $7,131,317
Goodbody	1,180	45,189
Dean Witter	1,208	1,442
Walston	1,175	1,601
Hayden, Stone	1,723	3,492
Blair	1,276	4,121
Dempsey-Tegeler	2,148	1 $7,356,287

1 Net capital deficit—the ratio of aggregate indebtedness to net capital can be computed because net capital is 0.

Short stock record differences thus can play a significant role in a firm's financial condition. Analysis of the treatment of short stock record differences at Blair and Co., for example, reveals that, if the full amount of the 1969 stock record differences which were unresolved at least after 75 days (the firm filed its audit 28 days late) were charged to net capital in computing the firm's net capital ratio, the firm would have been in net capital violation. The firm ultimately filed a voluntary petition in bankruptcy on September 29, 1970, and was liquidated.

C. Long stock record differences

A long stock record difference is created when a broker has securities in its possession but its books and records do not indicate who owns the securities. The securities might belong to the firm, customers or other brokers. Long stock record differences represent a problem because those representing customers' securities are not readily identifiable as such on the books of the firm.

Long stock record differences for eleven major retail houses for 1968, 1969 and 1970, are shown in Table VII.

TABLE VII.—LONG STOCK RECORD DIFFERENCES

	1968	1969	1970
Merrill Lynch	(1)	$15,013,710	$3,713,869
Bache	(1)	1,250,000	1,972,120
duPont	$29,675,367	10,648,696	13,783,671
Goodbody	(1)	15,000,000	12,750,000
Dean Witter	19,412,758	4,977,178	1,100,000
Walston	4,488,176	1,226,745	754,000
E. F. Hutton	18,527,979	4,750,000	444,000
Paine, Webber	7,753,534	2,982,283	988,067
Hayden, Stone	(1)	2,805,000	276,419
Blair	2,136,154	2,966,628	(2)
Dempsey-Tegeler	18,363,753	18,877,961	(2)

1 Not applicable.
2 No audit filed; the firm was being liquidated before its audit date in 1970.

Long stock record differences present additional problems not associated with short stock record differences. When long stock record differences are not resolved, they provide the temptation for the broker to use the securities by selling or pledging them, or otherwise turning them into cash. Because such a practice provides cash for the firm, there may be an economic incentive in not resolving the differences.

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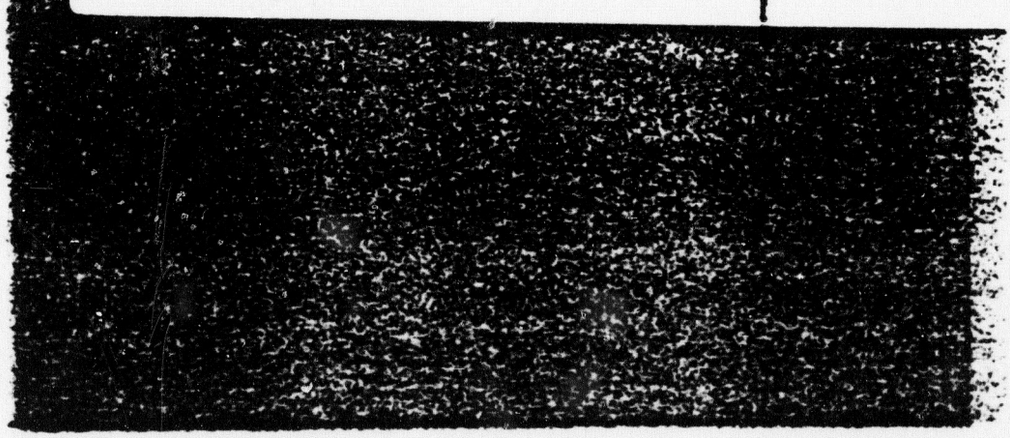

tion's staff that the "30 day test" should be expanded to a "60 day test" because insurance companies are not capable of processing claims within 30 days.[28]

Hayden, Stone took credit for net capital purposes in a case where the insurance claim had not been filed. Had the unfiled claims not been given credit for net capital, the firm would have been in violation of applicable net capital requirements. The Exchange did require the firm to treat its insurance claims in conformity with the treatment the Exchange required of its other member firms.

f. Excessive costs of faulty records

The costs of researching and carrying errors also presents a financial burden on a firm. Such costs are difficult to isolate, but certainly are present. In addition to a particular error, such as a short stock record difference, not being resolved by a firm resulting in the firm being required eventually to buy-in the securities, the overhead incurred in researching the error is likewise expensive. Further, if firm assets are involved in the error, the firm might be deprived of the use of some of its capital, and, at least theoretically might have to obtain the capital from another source at an unnecessary cost.

In a speech given to the Institute for Advanced Technology (for the securities industry) on June 4, 1971, Wilmer Wright, founder of the management consultant firm of Wright Associates, spoke of the cost of errors.

> Most firms would hire a new employee, sit him down by an experienced worker and tell the worker to show the new employee how to perform the operation. Since the worker was not trained as an instructor and in many cases didn't really know the job he was supposed to be doing, the training period resulted in poor training and a net decrease in out put of about 50% on the part of the experienced worker. In other words, for each new employee added, we temporarily reduced our total capacity by one half employee. When you remember that Exchange member firms added a total of 22,000 employees from 1967 to 1968, or an increase of 20% in one year, you can begin to picture the consequences of inadequate training techniques and short sighted personnel policies. . . . The number of money errors in 1968 was five times the 1964 rate. Non-money errors increased at least three times as much. Here again, the culprit was lack of trained employees. Our studies indicate that for each original error made, at least three or more were made in the process of correcting the first one.

The magnitude of expenses resulting from errors has been so great as to impel Dr. William C. Freund, Vice-President and Economist of the New York Stock Exchange, to state:

> The need for better planning and control is dramatized, for example, by the ballooning of "losses and errors in accounts"—an expense item that may serve as an index of operational efficiency. Between 1967 and 1969, expenses directly associated with losses and errors soared 112 percent to $83.5 million—a rate of increase sharply out of proportion to the climb in gross income. It can be assumed that general inefficiencies buried in other expense categories also rose.[29]

CONCLUSION

One of the principal factors which contributed to the distress of the financial community was the tendency to stand off the evil day, with the consequent accumulation of operational problems to the point

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[28] Staff memorandum to the Commission, April 15, 1970.

[29] Address by Dr. William C. Freund, Management Conference of the Association of Stock Exchange Firms, September 10, 1970.

of no return. This should not be permitted to occur again; and every effort of the industry must be expended to place it in a position through modern computer technology to handle the anticipated volume of the 1970's.

The inadequacy of management in the securities industry can be laid to the door step of its excessive concentration on sales and on trading.[31] On the latter point, reference has already been made to the heavy expenditure by the industry of customers' free credit balances and other cash equities in the firms' proprietary securities.[32]

Recent independent studies have commented on the phenomenon of the lack of managerial caliber in the industry with the consequent absence of planning and of the use of ordinary management techniques as constituting a function of the focus on sales. The Lybrand report[33] urges that "firms should eliminate the serious hierarchical void that exists at the middle-management level where important supervisory posts have been filled by personnel lacking administrative ability or training."[34]

Wright Associates, the management consulting firm which has performed services for the industry for many years, conducts an ongoing survey of originally seven, then of thirteen, and, now, of about nine NYSE firms of substantial size.[35] Four of the firms included in the group experienced such difficulties that they could not survive except by merger or being taken over by new management with a substantial infusion of capital. These are, Goodbody & Co., Hayden, Stone Incorporated, Hirsch & Co. and F. I. duPont & Co. Had their managements been sensitive to the volume of business required to break even, they might have recognized their plight in time to initiate cost-cutting measures to reverse their downward trend. The quarterly reports rendered to these firms by Wright Associates based on the records of these firms revealed that, by the first quarter of 1969, they exceeded the "margin of safety" in the relationship between gross income and direct and periodic costs. The formula employed by Wright is explained by the following example:

	Million
Total gross income	$25
Direct costs: Producers compensation; excess production salaries; managers' salaries and bonuses; commissions paid others; clearing charges; exchange fees; and net brokerage costs.	
Total direct costs	10

[31] See *supra* p. 53. Amex found it necessary in October 1969 to adopt its Rule 23, to restrict short term trading by members for their own account from off the floor. See p. 38 of Amex Request to SEC under cover of its June 1, 1971, letter.

[32] See ch. 11, p. 75 *supra*.

[33] This is a report sponsored by Lybrand, Ross Bros & Montgomery, a certified public accounting firm which engages in brokerage accounting. The report is entitled "Paper Crisis (1970) in the Securities Industry: Causes and Cures" (hereinafter called the Lybrand Report) and it was prepared by Professor Sidney Robbins of the Columbia Graduate School of Business, Walter Werner, Professor of Business Law, Columbia School of Law and Columbia Graduate School of Business, Craig Johnson, Assistant Professor in Finance, Columbia Graduate School of Business, and Aaron Greenwald, a member of Lybrand's consulting staff. Both Robbins and Werner are former staff officials and had important roles in the special Study.

[34] Lybrand Report, p. 9.

[35] The variation in the number of firms studied is accounted for principally by such events as the insolvency and merger (with consequent disappearance) of some of the number. A Wall Street Journal article on June 30, 1970, p. 20 identifies the 13 firms as of that date as Reynolds, Paine-Webber Jackson & Curtis, Goodbody, Shearson-Hammill, E. F. Hutton, Thomson-McKinnon, Dean Witter, Walston & Co., Hayden Stone, Hornblower & Weeks, duPont and Bache.

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crisis, such as old fail to receive items, and stock record differences. Moreover, the financial condition of *most* firms was further adversely affected by the market value decline in firm trading and investment accounts and by the withdrawal of capital contributed by partners and subordinated lenders. Firms also lost working capital by the reduction in customers' free credit balances and by the increased reliance on non monetary items to bolster their capital (e.g., subordinated demand notes and subordinated accounts).

Next, I would like to deal with your first and third questions together: "*Have the rules of the self regulatory groups been effective in preventing and correcting the difficulties?*", and "*Why have some broker dealer firms apparently been permitted to operate after they have gotten into such difficult financial condition?*" Self regulation should be strongest in the area of financial responsibility, because firms trading with each other are highly interdependent and all have a direct self interest in ensuring that a troubled firm does not pull the rest of them down with it. The industry generally has also been conscious of the need to prevent the financial difficulties of a broker from causing losses to its customers, thereby undermining the public confidence upon which the markets rest. However well the self regulatory mechanism might be able to cope with individual firms in difficulty, it did not prove to be designed to handle industry wide operational and financial problems of the magnitude experienced during the past three years.

Although the ordinary business can continue to operate despite financial problems, until it becomes insolvent or its liabilities exceed its assets, it has long been recognized that the customers of brokerage firms need to be protected by the application of higher fiscal standards. Pursuant to Congressional authority, the Commission in 1944 made effective a net capital ratio rule the purpose of which was to ensure that a broker had enough liquid capital to meet the ordinary needs of his business, and that he would be shut down, if in trouble, at a time when he would still have enough assets to cover the claims of his customers.

At the time the Commission's net capital rule was put into effect, the rules of the exchanges were more stringent that the Commission's (for example, the NYSE's maximum permissible liabilities to capital ratio was then 15:1 rather than 20:1 as under the Commission's rule), and so the Commission exempted members of the specified exchanges from the applicability of the Commission's rule. Exchange members were usually fairly large firms, but the Commission's rule had to be so framed as to permit small firms to enter and remain in business so long as they did not endanger their customers. Since then, the Commission's rule has been tightened in interpretation and application, while those of most of the exchanges it now appears were relaxed, at least in the last several years. This appears to have resulted from a concern on the part of the exchanges with the difficulties which might be encountered in closing a large firm. The result has been to reverse the respective stringencies of the rules as interpreted from that obtaining originally, and today as interpreted and enforced by the Commission, the Commission's rule affords investors the most protection.

This reversal came about gradually, for the most part. Before the recent financial problems came to the fore, there was arguably little practical difference between the Commission's and the Exchange rules. However, in 1969, as the result of the widespread financial difficulties of the member firms, the NYSE relaxed the interpretation and enforcement of its net capital rule in order to avoid placing a number of firms in violation, which might have had the effect of weakening public confidence in such firms and in the Exchange community.

Because of its Special Trust Fund, the Exchange felt able to adopt a "work-out" approach in a number of cases, whereby the firm was allowed to continue in ostensible compliance with the net capital rule while it attempted to bring its problems under control or until it reduced the size of its operations so that liquidation could be made more easily. In a Special Membership Bulletin dated October 1, 1970, copy enclosed, entitled "Report on Self Regulation", the NYSE explained its policy in these terms:

"For example, in the case of three major member organizations, the Exchange found itself facing situations where normal application of rules could have meant possible loss for many thousands of customers and potential chaos in the industry. These firms, Dempsey Tegeler & Co., Inc., McDonnell & Co. and Hirsch & Co., carried a combined total of some 165,000 customer accounts. Their paper work and capital problems were critical.

"With each firm, the Exchange allowed continued operation under increased regulation, pending a scaling down of business and reduction of paperwork backlogs. The hope was a scaled down firm would present a manageable liquidation situation."

Apart from the decision to follow this policy in the enforcement of its capital rule in at least certain instances, the NYSE as well as the other self regulatory organizations did not have adequate and timely programs to detect and monitor either the operational or the financial problems of their members. Consequently, by the time the self regulatory bodies became fully cognizant of the problems, they had spread to such an extent that they could not be brought under control without the adoption of innovative broad based programs. We also believe the self regulatory organizations frequently accepted the most optimistic progress estimates from their members who because of their overriding self interest to remain in business, failed to objectively assess their own difficulties. There also seems to have been a hope that conditions would immediately improve with a sustained market upturn. Of course, when market conditions did not improve, the problems intensified.

For these and other reasons, the NYSE, the principal self regulatory organization, did not foresee and plan the steps necessary to cause a number of firms to correct their problems until their condition had deteriorated substantially. In many instances the NYSE allowed and arranged mergers which brought troubled firms together or combined a firm in a critical state with an ostensibly healthy one. In some cases these combinations were successful; in others they exacerbated existing problems. Moreover, there was some lack of contingency planning and a number of failures were only averted through herculean efforts at the last minute. Nevertheless, the members of the New York Stock Exchange did voluntarily expend in excess of $35 million of trust funds to assist in the liquidation of troubled firms, in recognition of their obligation to protect the customers of such firms from losses. The Exchange has further agreed, at the urging of the Congress, to protect customers involved in certain pending member firm liquidations not presently covered by the Special Trust Fund. The Exchange has also obtained authority to assess its members up to $30,000,000 to cover contingent liabilities which may arise from the Goodbody situation and we understand that it proposes to increase the size of the Trust Fund by $20,000,000. Members of other stock exchanges have also contributed to trust funds which are helping to meet customer losses and thus sustain investor confidence.

You further ask: "*What has been the Commission's role in supervising the work of the self-regulatory groups*". For the past three years, we have been attempting to make the legislative patterns of self regulation work in the securities industry through numerous actions. We believe it will be helpful to describe generally some of these activities.

From our analysis of complaints about broker dealers made to the Commission in early 1967, we came to the conclusion that the operations problems were more serious than were generally realized by the industry. Accordingly, we wrote to the ten firms which caused the greatest number of customer complaints, asking them what corrective measures they were taking about their apparent operations problems and whether we or the self regulatory bodies might be of assistance. In general, the firms indicated that their problems were of a "business" and temporary nature, which they could handle. They not only opposed governmental intervention but expressed the view it would actually be harmful.

Our concern was also discussed with the self regulatory bodies, and in August of 1967, the exchanges curtailed trading hours for a short period. In the fall of 1967 we received the first concrete indication that the operational situation was not improving. We were unable to obtain certain records from Pickard & Co., a NYSE member firm, and we notified the Exchange about our difficulty and our concern at the way the firm was being run. Several months later, when the Exchange examined the condition of the firm, our concern was confirmed and the Exchange commenced to liquidate this firm with the aid of trust fund monies.

In January 1968, the Commission wrote to the New York and American Stock Exchanges and the NASD, expressing concern about "accounting, record keeping

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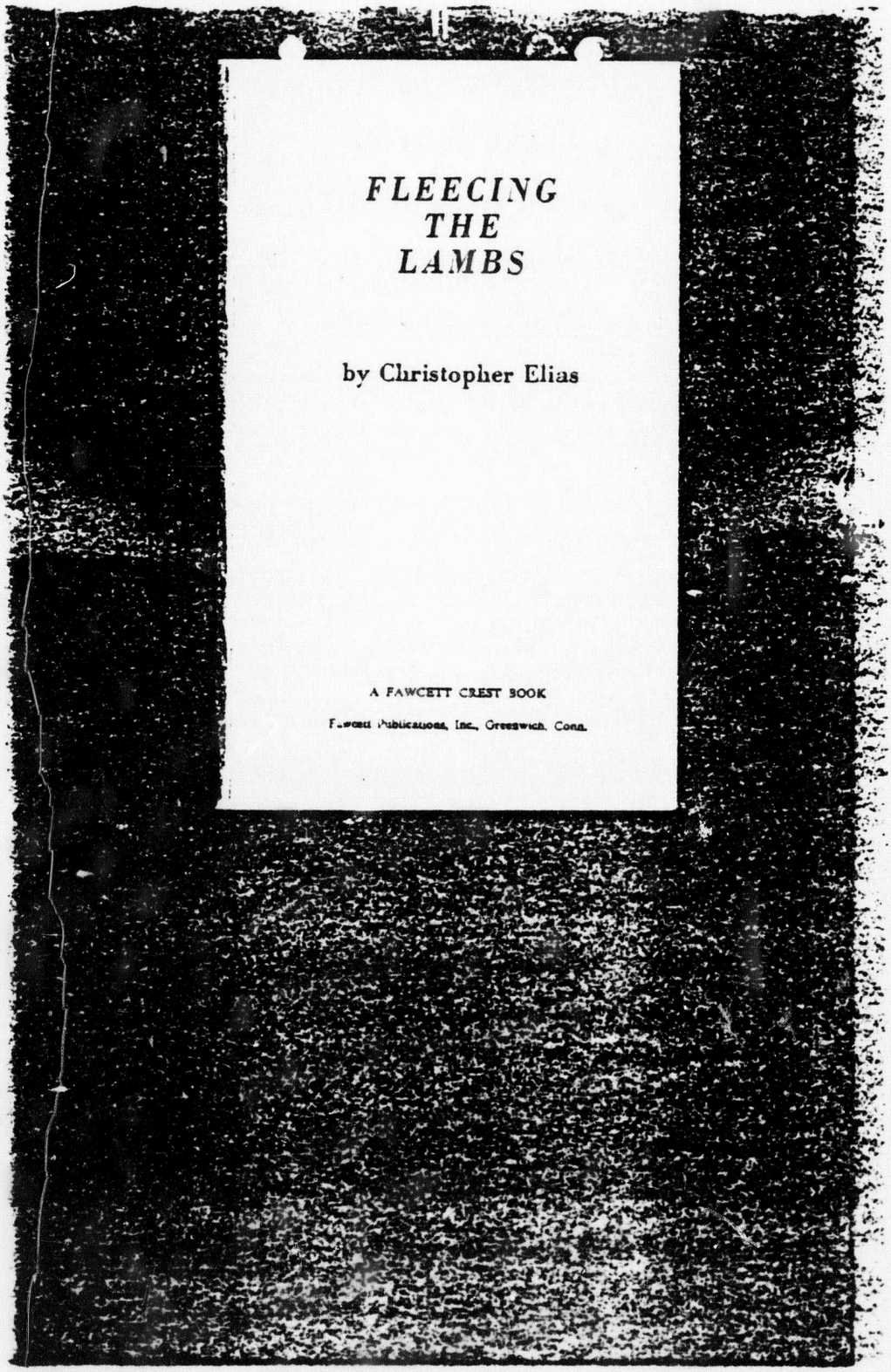

FLEECING THE LAMBS

by Christopher Elias

A FAWCETT CREST BOOK

Fawcett Publications, Inc., Greenwich, Conn.

488

equal to five or seven weeks salary. He undoubtedly would be given the privilege of eating lunch in the senior staff dining room, though he might not be permitted to eat lunch in the Exchange's Luncheon Club on the eighth floor unless he were a favorite. (Permission to eat in the Luncheon Club is granted only by the Exchange's executive vice-president.) How well the staffer ingratiates himself with the Exchange's high-ranking vice-presidents, including the executive vice-president, also determines whether he will be invited to attend the weekly senior staff meetings. As the staffer makes his way upward, three or four promotions will raise his earnings to $75,000 or $80,000 a year.

High salaries and bonuses are only part of the incentive of the senior staffer to remain a loyal tool. While he is emasculated, as one critic sees it, the Exchange extends an ego-feeding power few people exercise outside government. Consider the Member Firms Department and the vice-president in charge, Robert M. Bishop, a thin-lipped, humorless man. Bishop was brought to the Exchange by Keith Funston from Trinity College, where Bishop had worked in public relations. When Funston left, Bishop stayed on even though he had lost his patron. Although Bishop was passed over by Haack when Haack was looking for someone to head the Exchange's biggest division, Operations, which included Bishop's own department, as manager of the Member Firms Department, Bishop is a man with great power. Member Firms is a watchdog agency, a kind of secret police force that investigates the industry. The department even controls hiring among member firms to the extent that it chooses the employment agencies with which the member firms may deal. It can withhold, suspend, or withdraw approval of employment for someone already working in a firm or for a prospective employee. It determines also the income a firm may pay an employee. Even so internal a matter as a

salesman's leave of absence is in the province of Member Firms authority.

The department's power among the members themselves is just as extensive. It can force them to appear to testify and to produce incriminating books and papers. It examines the financial questionnaires submitted by the firms to the Exchange and has the power to grant or refuse time to firms to solve financial problems. (In fact, it gave the firms so much time to solve problems of maintaining levels of capital that it undoubtedly contributed to the rash of insolvencies that ultimately occurred.)

For all the powers Member Firms wield, its investigations do not always lead to justice. Securities salesmen are censured every day for violating Exchange rules and securities laws, yet most escape with fines or are given a few days' suspension. If charged under common law for taking funds from a customer's account, for example, they would most likely lose their freedom. The member firms are likely to get off lightly, too. Under the Exchange's exercise of its regulatory function, some firms are more equal than others. The Exchange went to great lengths, even to putting up its own money, to save Hayden, Stone but was content to watch the less significant Devonshire Corporation sink into oblivion, taking its customers' accounts with it, though a court action forced the Exchange to reimburse Devonshire's luckless customers. No such pressure was needed on the Exchange, however, in the case of McDonnell & Company, a firm that actually raided the box of securities it held for customers. The Exchange paid out $8.4 million to the firm's 19,000 customers without a murmur of dissent. It was McDonnell's raid on its box of securities, and undoubtedly the raids of other firms, that finally stirred Member Firms on September 3, 1969, to recommend to the board of governors that all firms be required to account for customers' securities by "physical examination" along with a comparison of books and records. Member Firms also called for inspection of

L90

used the funds to stem insolvencies and pay off the customers of bankrupt firms.

As though the gags of money, power, and status are not enough, the Exchange also employs a Big Brother technique that keeps all but the most extreme mavericks in line. Basically, the technique threatens key men with the loss of their jobs. The Exchange uses what is called a "key man assessment sheet" to determine who will go and who will stay. The sheet deals in "jeopardy criteria factors" and amounts to an insidious piece of man-watching. In all, thirteen factors are used to assess a key man, after which he is assigned a "criticality rating." His "gripe level" is noted, as is his "commitment." If he doesn't like his job and makes the mistake of saying so, or if he is unclear about his role, or if he even thinks he sees an unfavorable personal future and feels left out, he is in deep trouble. Found guilty of just two or three of these "offenses" his criticality rating becomes one that "bears watching." If he is a friend of someone who has been fired, that, too, is held against him, as is being passed over for promotion. A criticality rating of 4 or 5 on the 13-factor scale puts him in the "serious" category. A rating of 6 or beyond puts a man in a "critical" position.

However, for most of the senior staff of the Exchange there is not much danger of being rated critical or even of being watched. The majority easily qualify for the one favorable rating: "solid." Most of the senior staff are loyal to the point of being argumentative in response to any criticism of the Exchange. The reaction of the Floor Department's O'Reilly to the Ney book, as well as Haack's similarly bitter reaction, is evidence of how the staff accepts criticism from the outside. Most staffers work so hard to please their superiors that they are suspicious of each other and compete intensely to win favor.

One of the more significant displays of jealousy, departmental partisanship, and rivalry among the senior staff occurred during 1969 and 1970 when the Member Firms

Department was investigating firms whose financial reports to the Exchange showed they were in violation of capital rules and heading for bankruptcy. Like secret police, the Member Firms staff, which took all its cues from Bishop, kept things secret, thus thoroughly annoying others on the staff who had a right to know, if only generally, what was happening. In fact, it was not until the summer of 1970, when Haack himself revealed the extent of Wall Street's insolvencies at a meeting of allied members—which senior staff were permitted to attend—that personnel in other departments learned how bad things were.

Weeks later the story was repeated with relish, even malice, when it was learned that many a Member Firm investigator had been faced down and shown the door by executives of the firm under investigation. After this had happened a number of times, the Exchange was forced to call on high-ranking executives of other firms to act as investigators. The Member Firm staffers, it was learned, had been deceived again and again with false figures, inflated estimates of a firm's capital, and plain lies about a member's ability to stay afloat financially. Among the top forty of the senior staff, where it was not decorous to do much more, the story was told with a grin or two. At lower echelons it was told with the straightforward attitude that the Member Firms personnel got what they deserved.

In June, 1971, when Bishop himself was transferred laterally to the newly created post of vice-president for special projects, it was felt, with some justification and no little satisfaction, that he had fallen victim to brokers' complaints of his "Heil Hitler attitude." For many of the staff, the failure of Member Firms, which seemed in the mainstream of things more than the other departments, undoubtedly helped deepen a feeling or two of insecurity.

Few of the senior staff give much evidence of brilliance. Few can be regarded as belonging to that ephemeral group of people known as the Establishment. Many, in fact, have worked their way up from low-level jobs, acquiring their positions by functioning as the hard-working drones the Exchange requires. Some are merely professional executives, faceless, of the sort readily found in most U.S. corporations. Many, in the course of advancing their careers, have attached themselves to a powerful individual in the upper reaches of the staff, or to one of the Exchange's ruling class on the trading floor—a specialist or a floor trader.

Eugene Miller, for example, fetched and carried for R. John Cunningham, the executive vice president of the Exchange, until Cunningham resigned early in 1971. Many a time, after getting a telephone call from Cunningham, Miller would abruptly leave a meeting he himself had called, causing as many as ten or twelve highly paid people to wait while he literally trotted down the hall to Cunningham's office. Professional executive that he was, Miller insisted more than once to his subordinates that instant response to a superior's wishes was an absolute necessity. Interestingly enough, when Cunningham left the Exchange, the staff consensus was that Miller was vulnerable. In fact, rumors circulated constantly that Miller was hunting for another job. Miller, however, was promoted to senior vice president.

The story of another vice president shows how such attachments, really political alliances, can be traumatic. The vice president in this case was Cecil MacCoy, the man in charge of Special Services until his retirement in June, 1971. Basically, his duties at the Exchange involved supervising the visitors' gallery, publishing the *Exchange* magazine, and organizing receptions for VIPs. Such duties were obviously of fringe importance, well removed from the mainstream, and clearly beneath a man of MacCoy's rank. Yet MacCoy, who admits he spent the last decade "protecting my rear," felt lucky still to be working at the Exchange at the time of his retirement.

In 1952, when Keith Funston arrived, MacCoy was in charge of the Exchange's entire public relations organiza-

looking *within* it. For the first time, the SEC began inspecting the books of brokerage firms closely, including those of the Exchange's member firms. SEC investigators began checking the firms' cash positions and even counting, one by one, stock certificates being held for safekeeping to determine whether the number they actually found agreed with the number on the firms' books. Those firms that refused to cooperate were threatened with court orders. When account books and executives alike disappeared, the investigators merely bided their time until both showed up.

Finally, the SEC staff forced some firms not only to give up financial information but to file *weekly* reports with the SEC showing current assets and liabilities. The unfortunate side of it all was that the SEC, operating as usual in semi-secrecy, released no names.

The SEC staff even investigated the New York Stock Exchange. For the first time in *half* a dozen years, SEC inspectors ran a check to determine whether the Exchange was indeed enforcing its rules for minimum net capital requirements, and they even subpoenaed internal memoranda when the Exchange balked. The contents of Exchange memoranda may, in fact, have led to the transfer of the Exchange's chief investigator and head of its Member Firms department, Robert M. Bishop, to another, less sensitive job.

What the SEC investigators discovered at the member firms and at the Exchange supports arguments for the end of self-regulation in Wall Street. The capital base of many a firm, rather than consisting of solid assets such as Treasury bills and cash, was found to consist for the most part of non-marketable stock. Some firms failed to show liabilities on their books, and a few didn't even know what their capital position was. For many an investor, the new-found zeal of the SEC was welcome.

No one can be sure that these actions of the SEC staff augur well for the future, especially with Casey now in-

WALL STREET: SECURITY RISK

by Hurd Baruch

Special Counsel, Division of Trading and Markets
United States Securities and Exchange Commission*

*The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication by any of its employees. The views expressed in Wall Street: Security Risk are those of the author and should not be attributed to the Commission or to the author's colleagues on the staff of the Commission.

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mented of these cases is the one against Schwabacher & Co.

Schwabacher was a major regional firm, based in San Francisco, having over 24,000 active customer accounts. In business for nearly fifty years, it had been a member of the New York Stock Exchange since 1930. Its failure to survive the operational crisis was due to an abortive attempt to convert its record keeping to a computerized accounting system sponsored by the Midwest Stock Exchange (of which the firm was also a member). Problems from the conversion started at the beginning of 1966, and were both internal and external. In particular, it was difficult to find competent operations personnel who had experience with the Midwest system, and a 30% increase in market activity prevented the back office crew from tackling previous errors.

Throughout 1966 and 1967 the Exchange kept apprised of the worsening situation but it did not take action. A visit by an Exchange examiner to the firm in September 1967 resulted in a 65-page report about the firm's deficiencies in the operations area, including:

—security count differences;
—under-segregation in margin accounts;
—failure to segregate fully paid for securities in cash accounts;
—deficiencies in accomplishing shipping instructions;
—unauthorized release of segregated securities;
—excessive fails;
—unreconciled clearing house accounts and brokers' accounts;
—commingling of customers' securities without consent in bank loans;

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—[illegible] mingling of partners' securities with customers' in bank loans;
—unreconciled suspense accounts; and
—dividend department out of control.

While the reader who is not himself expert in back office procedures may not have grasped all of the above bill of particulars, still he must have gotten the general impression that everything that could possibly go wrong with Schwabacher's back office had done so. So immense had the problems become as of the firm's October 27, 1967 audit date that its independent auditors could not give a "clean" certificate to its financial statements. Numerous differences in money and security positions remained unresolved and uncorrected, thus making it impossible for the auditors to determine with reasonable accuracy the partnership's capital. Under such circumstances, how was it possible for the New York Stock Exchange not to find that the firm was in no condition to carry on business with the public?

Not only did the Exchange allow the situation to go from bad to worse under its eyes during 1966 and 1967, it was ineffective when it did take action in 1968. On February 27, 1968, five months after the examiner's visit reported above, the Exchange at last imposed restrictions on the firm: no new registered representatives were to be hired; no underwriting commitments to new clients were to be made; and no expansion of the business was to be undertaken. Further restrictions followed in March, April and June. In July of 1968, the Commission stepped into the picture, instituting administrative proceedings against

the firm. It also barred all promotional advertising, curtailed underwriting activity and limited the firm's market-making activities.

Unfortunately, time was running out for the firm. In the course of making the annual 1968 audit, as of August 30th, its auditors turned up approximately *thirty-one thousand* record-keeping errors which needed correction. Due to the size and nature of these errors, the auditors were of the opinion that the firm's X-17A-5 report did *not* fairly present its overall financial position. Still the Exchange refused to conclude that drastic action was called for. Finally, in December, a decision was made by the Exchange that Schwabacher & Co. would have to merge with another firm or sell a number of branch offices.

Pursuant to this directive, the firm arranged to merge into Blair & Co., Inc., another NYSE member firm, during February 1969. Even then, as we will see in Chapter Eleven, the Exchange's responsibilities were not discharged—Blair itself failed the following year, partly because of the operational problems which it inherited from Schwabacher.

One error of the Exchange in dealing with its troubled members was to apply restrictions that were too little and too late to do much good. Another was to cancel its restrictions on very sick firms, not long before they had to be closed down. Such was the case with both McDonnell & Co., Incorporated and Dempsey-Tegeler & Co., Inc.

By November 1969, just a few months before

had a multi-million dollar exposure from the sums owed them by their customers which were unsecured or inadequately secured. These unsecured receivables, which arose because firms did not require customers to maintain enough margin, presented a financial danger because the customers might not ultimately pay what they owed, and their accounts did not contain enough securities for the broker to make itself whole. To a large degree this problem was due to a breakdown in record-keeping and to a lack of adequate controls over firm margin departments. At the five firms used above to exemplify operations problems, 1969 X-17A-5 figures reveal the following state of affairs:

UNSECURED OR INADEQUATELY SECURED CUSTOMERS' ACCOUNTS AT TROUBLED FIRMS (1969)

Firm	Unsecured Accounts	Inadequately Secured Accounts	Total
F. I. duPont	$6,579,006	$1,495,355	$8,074,361
Goodbody	4,155,883	1,621,678	5,777,561
Hayden Stone	4,156,375	50,911	4,207,286
Dempsey-Tegeler	1,444,624	70,110	1,514,734
Blair & Co., Inc.	505,268	135,551	640,769

The reserves set up against this exposure varied considerably from firm to firm. At Blair, there was none. At Goodbody, there was neither a valuation nor a liability reserve, merely an earmarking of funds, via the same capital reserve that applied to many other items. The other three firms, F. I. duPont, Hayden, Stone and Dempsey-Tegeler, set up actual reserves of $579,007, $2,363,718 and $200,000, respectively. In summary, the

any failure to conduct proper audits, so the reader should suspend judgment as to which party is responsible for the firm's long-time operation in net capital violation. We have seen, with regard to many NYSE members, that the fact that they were in violation of Rule 325 did not prompt the Exchange to take effective action, and it might be hard for the Exchange to demonstrate that it would have acted any differently in the case of Orvis if the auditors had given it the warnings which it alleges they failed to do. So far, the Special Trust Fund has expended $4,200,000 in the liquidation.

Blair & Co., Inc.

In their rush to acquire a "stable" at bargain prices, too many brokerage firms have failed to look gift horses in the mouth to make sure that they carried no communicable diseases. During the whole four-year crisis, 1967 through 1970, very few brokerage branch offices were closed. In fact, the total number of branch offices maintained by NYSE member firms rose steadily throughout 1968 and 1969, from 2,807 to 3,390. When a firm went under, other brokers could not resist the opportunity to expand at nominal cost.

Blair & Co., Inc., was one of the firms which grew rapidly by taking over the network of a failing broker. It may be recalled from Chapter Six that Schwabacher & Co. had completely lost control of its records in attempting to computerize its bookkeeping. Forced by the Exchange at long last to choose between liquidation and be-

coming part of a larger firm. Schwabacher sold out to Blair in February 1969. There were serious obstacles to such a union, particularly the fact that the Schwabacher branch offices' operations were geared to the Midwest Stock Exchange's service bureau, whereas the Blair branches were not. However, an advertisement run the [illegible] of the marriage gave no hint of the problems:

> "If you could buy stock in our corporation, we think it would be an excellent 'growth' issue . . . especially today, as our merger with Schwabacher & Co. takes effect.
>
> In short, we believe we have made a giant step forward in our program of *qualitative* growth. We offer you more, and improved, facilities and services—and the *staff* to supplement them. . . ."

Actually, the firm was taking a giant step *backward*, as it came to realize only too soon. The progress made in straightening out the operational chaos at Schwabacher after the acquisition was too little and too late. Like many other firms, Blair was also hurt by the slump in the stock market and posted large operating losses in 1969 and 1970. It is not known at what point the situation became hopeless, but judging from the fact that the Exchange has earmarked $26,000,000 for the liquidation, the firm must have been operating for an extended period of time in violation of the Exchange's net capital rule.

Dempsey-Tegeler & Co., Inc.

To date, $21,500,000 has been set aside by the Special Trust Fund for the delivery of accounts of customers of Dempsey-Tegeler & Co., Inc., which makes it the sec-

& DeBoer; Kleiner, Bell; Meyerson; Fusz-Schmelzle; Orvis Brothers; Blair; and Dempsey-Tegeler. In every case the Exchange indicated that it would stand behind the firm and hold the customers harmless. Although so many capsizings began to unnerve the public, it was reassured that the Exchange was always there with the life preservers. The only indication that the Exchange might be getting tired of playing lifeguard came in the Congressional hearings on the customer insurance legislation.

By letter of July 14, 1970, NYSE President Haack informed the Commission that the Exchange would protect the customers of four member firms which were formally in liquidation and of six member firms which were "as a practical matter also in liquidation." In testifying about the extent of the Exchange's responsibility beyond what Mr. Haack acknowledged, SEC Chairman Budge stated:

> "Aside from any other liabilities the exchange may have, we believe they must accept responsibility for all firms which were permitted to operate in violation of the net capital requirements. We also believe the exchange must accept responsibility for any other firms who may be permitted by the exchange to operate in violation of such requirements before the insurance program is operative."

In his questioning of the vice chairman of the Exchange, Senator Muskie attempted to follow up Chairman Budge's hint that there might be more than ten firms in serious trouble and that the Exchange might not cover them with its Special Trust Fund:

> "Sen. Muskie: . . . it is conceivable, isn't it, that there might be other situations where trouble is now brewing, which are to remain the responsibility of the Exchange?"

NEW YORK STOCK EXCHANGE, INC.

DEPARTMENT OF MEMBER FIRMS

* * *

New York, April 15, 1971
(11:00 A.M.)

MR. JAMES B. RAMSEY, JR., former President of Blair & Co., Inc., accompanied by Robert Thomajan, Esq., of Milgrim, Thomajan & Jacobs, appeared before Mr. Jeffrey Morrison, Conduct Investigator, of the Department of Member Firms, when the following discussion took place:

MR. MORRISON: Let's open the record.

Mr. Ramsey, for purposes of identification, I am Jeff Morrison, a member of the staff of the Department of Member Firms. The Board of Governors has delegated to me the authority to require members, allied members and former allied members of member organizations to appear and testify in connection with investigations. Any statements you make to me today are the same as statements made by you to the Board of Governors itself.

I should also like to remind you that a member,

(1)

Q. And?

A. Subsequently, another team of accountants, as I remember it, Arthur Anderson and also Arthur Young, were persuaded to take another look at Schwabacher. Some weeks later --

Q. Persuaded by whom?

A. Persuaded is not the best word. Suggested that we look at it again.

Q. By whom?

A. By the Exchange; that the situation had changed for the better, and that a subsequent examination might prove that the situation had improved a great deal. This was some time after Thanksgiving of 1968. Then ..ny meetings later between Mr. Lendman, Schwabacher, the SEC, the New York Stock Exchange, et cetera produced a merger.

Q. You mentioned Mr. Lendman had originally disapproved of any merger possibilities because of the condition of Schwabacher. Do you feel that this had anything to do with his resignation from Blair & Co.?

A. Because he originally disapproved of it?

(2)

Q. Were there any problems by the Schwabacher partners, such as promises unkept as far as the capital commitments and contributions to the new firm were concerned?

A. Promises, no, but a very serious capital situation arose from the western division audit, inasmuch as the money, hopefully that would be found at that audit to purchase and pay for a great deal of Blair stock was not forthcoming.

Q. Prior to the merger, what steps did Blair take to evaluate the books and records of Schwabacher & Co.?

A. Originally, the Stock Exchange requested, or suggested that we take a look at Schwabacher & Co. who were experiencing difficulties. Mr. Lendman conducted an examination of Schwabacher, and declined to go forward with a merger.

Q. On what grounds?

A. He felt that the condition of Schwabacher had deteriorated to a point that it would be unwise to accept such a merger.

(3)

the merger produced two men for one obvious job. I tried, insofar as possible, to keep the man, whether he was from the Schwabacher organization or the Blair organization, in the most responsible position. I can think of the occasion where a syndicate man, who was the son of a Schwabacher partner, had to be eliminated.

Q. His name?

A. William Cahn, III, C-a-h-n. His father was obviously quite distressed that such a thing happened. I could think of a circumstance such as this, that even though we tried, in some cases, to bring a man from California, for example, a Mr. Skinner who would have taken one of the top slots in New York, obviously a person in New York would be somewhat chagrined at that development. So, beyond the normal dislocation of people in any merger, I would say the relationship was good.

Q. Did Albert Schwabacher present any problems?

A. I found Mr. Albert Schwabacher completely cooperative.

(4)

the restrictions from the date of the merger and before and until his resignation on April 30th. Inasmuch as many restrictions still remained on April 30th, I proceeded to try to get these lifted, but a general deterioration of the market had already begun, so that volume was a factor in profitability at that point. But, for example, I can remember that the first two months of the Schwabacher merger was most difficult, in that in that short period of time some $700,000 in losses came from the western division operation. So, therefore, you would have to say that the contributing factors, meaning the merger, was definitely an undertaking which we should not have done.

MR. MORRISON: Off the record.

(Discussion off the record.)

MR. MORRISON: Back on the record.

Q. Mr. Ramsey, was there any animosity between partners of Blair and Schwabacher which could be construed as having a deleterious effect on the management of the firm?

A. There was an occasional situation where

remained on the Schwabacher organization after the merger, made it virtually impossible for the western division to contribute.

Q. Had you been given any indication that once the merger between Blair and Schwabacher had been consummated the restrictions would have been immediately lifted?

A. Mr. Lendman had indicated that this had been a fait accompli.

Q. What was the source of Mr. Lendman's information, do you know, sir?

A. No, but I assume it was the meeting with the SEC in Washington.

Q. Had you had any occasion to discuss the problem with the SEC after Mr. Lendman's resignation?

A. Not directly with the SEC. I did ask Mr. Daley, one of our attorneys, to work as diligently as possible to see if the restrictions could not be lifted immediately; but remember, Mr. Lendman stayed on for two months after the merger.

Q. From what time to what time?

A. Mr. Lendman was working on the lifting of

(6)

Q. This was the 16th of January, was it not, sir?

A. I called the meeting for the insiders and outsiders of Blair on January 15 and informed the Exchange on the 16th. I had told the people at the Bankers Club that I would go to the Exchange the following day; that while I was unaware of our capital position I felt it was serious enough to inform the Exchange that a capital violation might be in existence. With the records I had then, there was no way to be sure.

Q. Would you consider the conversion of the ACS to the Midwest system the major reason for the downfall of Blair?

A. It is hard to pin the liability on a major reason; I think there were several contributing major reasons.

Q. Would you discuss those, sir?

A. I think it is quite obvious, in light of the facts, that we never should have done the Schwabacher merger. Then, the fact that very many restrictions

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BLAIR & CO., INC.
20 BROAD STREET
NEW YORK, N.Y. 10005

Members
New York Stock Exchange
American Stock Exchange
Midwest Stock Exchange

Cable Address
OCRIALB NEWYORK
Telephone
DI 4-4000

FLS exhibit 75 for cl
11/4/75
SLB

January 3, 1969

Mr. Robert M. Bishop, Vice President
New York Stock Exchange
11 Wall Street
New York, N. Y. 10005

Dear Bob:

I am enclosing herewith a letter from John Spohler, Vice President and Director of Advertising for the firm. Mr. Spohler is answering my specific questions having to do with the advertisement the SEC seemed to find to be at odds with the facts. I think the letter is self-explanatory.

I would like to make one additional comment, Bob, as to the why of this advertisement. The intent of the ad was concentrated primarily to show not only the fact that the back office operations personnel can become officers of the firm, but to show what we are laying particular emphasis on the progress of these people and their relative importance to the organization. The real intent was to hopefully bring, in addition, operational people to augment our own staff. This to me has been the type of advertising that the industry of Wall Street should be doing in order to gain as much and as good an operating personnel as we can. Our plans called for additional operational people to be so exposed with the appropriate comments concerning each of the departments.

I do hope this serves to clarify not only the language of the ad but, also, the intent and purpose of the ad.

Going to one final area of the SEC inquiry, as was stated to you on the telephone, we have considered the merger of Schwabacher & Co. to be "effective" only insofar as our guidance towards managerial policy and restructure within

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their own organization not within the combined firm. Our plan remains as stated to you sometime ago that both operational staffs will continue on their own well past the March 1st date given. Therefore, we will hopefully not be placing additional burden on either one of our operational functions but only in those areas where efficiencies and costs such as Research and Syndicate will be brought together following the merger date.

We would appreciate anything you can do towards the assistance of Blair and, at the same time, Blair-Schwabacher.

If I can be of any further assistance to you, please advise me.

Sincerely,

James B. Ramsey, Jr.
Executive Vice President

JBR:ad
Enclosure

5/0

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DEPT. OF FICHS

Plfs exhibit #79 for id
11/4/74
SLB

January 2, 1969

Memorandum to: Mr. James Ramsey

From: Mr. John Spohler

In reply to your inquiry concerning our recent ad featuring Operations Department heads with coupon "Dear Vinny", please note the following information:

According to Mr. Schloen of the Personnel Department, as of November 30, 1967 we employed 287 sales representatives (including 62 producing "partners") and 464 clerical department employees. As of November 30, 1968, we employed 306 sales personnel (including 72 producing "partners") and 678 clerical personnel. The net addition in our clerical department, therefore, was 214, which justifies our statement, "We've added hundreds of people to our Operations Department in the past year".

Of course during the period our actual hiring involved over 500 clerical personnel in order to replace and fill new openings in our expanded Operations Department. I think the significant thing here is that during this period we had a net increase in our Sales Department of something under 6%, as compared to an increase in our supporting clerical department of about 30%.

I think it should be noted that this ad is part of an image building campaign which was conceived in August and September of 1968, and which was designed to feature key people in the Blair organization. The specific purpose of the ad in question featuring the Operations Department personnel was to give these key gentlemen some recognition (build morale esprit de corps, within the Operations Department) at a critical end-of-the year period when employee turn-over in these departments is the greatest.

Please advise if I can provide you with any additional information.

John Spohler

JS:idb

cc: Mr. Robert N. Brodie

5/2

CERTIFICATE OF SERVICE

I hereby certify and state:

I am an attorney at law, counsel in this cause and not a party thereto. On January 5, 1976 I personally delivered copies of the attached documents to "Network Courier Service" for next-day delivery to:

Edward J. Reilly, Esq.
MILBANK, TWEED, HADLEY & McCLOY
1 Chase Manhattan Plaza
New York, New York 10005

Robert Thomajan, Esq.
MILGRAM, THOMAJAN & JACOBS
25 Broadway
New York, New York 10004

J. THOMAS HANNAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

JAMES ARNEIL and VERNON A. STOCKWELL, :

Plaintiffs, : 75 Civ. 1766-CLB

-against- :

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE, : MEMORANDUM AND ORDER

4/3/94

Defendants.

- -X

Brieant, J.

On April 11, 1975, plaintiffs filed a complaint alleging, in fourteen separate counts, numerous violations of Sections 6, 10(b) and 20 of the Securities Exchange Act of 1934 ("the 1934 Act"), 15 U.S.C. §§78f, 78j and 78t, and Rule 10b-5, 17 C.F.R. §240.10b-5. In addition plaintiffs have asserted various claims of common law fraud and breach of a fiduciary duty.

Jurisdiction is premised on §27 of the 1934 Act, 15 U.S.C. §78aa and principles of pendent jurisdiction.

The Parties.

Plaintiffs James Arneil and Vernon Stockwell are long-time residents of Wenatchee, Washington. Mr. Arneil is an attorney and Mr. Stockwell is the manager and part owner of two apple orchards.

Defendant New York Stock Exchange, Inc. ("the Exchange") is a not-for-profit corporation organized under the laws of the State of New York and registered as a national securities exchange under §6 of the 1934 Act.

Defendant Blair and Co., Inc. ("Blair") was a member organization of the Exchange and a stockbroker. On September 25, 1970, Blair ceased operations, and the Exchange appointed Mr. Patrick E. Scorese as liquidator for Blair.

Defendant James B. Ramsey, Jr. is a former President of Blair. Defendant Oliver DeG. Vanderbilt is a former Chairman of the Board of Blair. Defendant William M. Lendman is also a former President of Blair. Ramsey, Vanderbilt and Lendman will sometimes be referred to collectively as the individual defendants.

The Complaint.

In Count I, plaintiffs claim that all defendants violated Rule 10b-5 in April of 1969 by inducing and encouraging the plaintiffs to purchase non-voting common and preferred stock of Blair and to become subordinated lenders to Blair. Count II charges all defendants except Blair with aiding and abetting Blair in the sale of its securities in violation of Rule 10b-5. Count III alleges a conspiracy to violate Rule 10b-5 in that the Exchange and the individual defendants agreed to obtain additional capital for Blair through the sale of securities to plaintiffs without adequate disclosure of material facts. Count IV asserts that the Exchange and the individual defendants were persons in control of Blair (as defined by §20(a) of the 1934 Act) and as such owed a duty to the plaintiffs in connection with the purchase of these securities and issuance of secured demand notes.

Counts V through XII allege numerous violations of §6 of the 1934 Act. The Exchange is the only defendant on these §6 counts, discussed in more detail below.

Count XIII alleges that all the defendants are guilty of common law fraud in connection with the purchase of the securities

and the giving of the notes.

Finally, Count XIV asserts that the Exchange breached a fiduciary duty which it owed to the plaintiffs by favoring its own interests and the interests of its members over the interests of the plaintiffs and the general public.

All defendants except Blair[1] have moved for summary judgment pursuant to Rule 56, F.R.Civ.P. The individual defendants move solely on the ground that the 10b-5 and common law fraud claims (the only counts in which they are named) are time barred by the applicable statute of limitations. The Exchange bases its motion both upon the statute of limitations point and on the ground that there is no genuine issue as to any material fact.

The 10b-5 Claims (Counts I-IV).

The Securities Exchange Act of 1934 prescribes no period within which actions must be brought. Nor is there any general federal statute of limitations applicable to all civil actions alleging violations of federal law. However, it is well settled that where Congress creates federal rights but does not prescribe a time period for enforcement, a federal court will apply the statute

of limitations law of the forum state. International Union, United Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 703-05 (1966); Klein v. Bower, 421 F.2d 338, 343 (2d Cir. 1970).

Our reference to New York law to determine whether or not the action is timely includes its "borrowing statute," New York CPLR §202. Cope v. Anderson, 331 U.S. 461 (1947); Sack v. Low, 478 F.2d 360, 365 (2d Cir. 1973); Hornblower, Weeks, Hemphill & Noyes v. Burchfeld, 366 F.Supp. 1364, 1367 (S.D.N.Y. 1973). That statute provides:

> "An action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply."

As noted in Korn v. Merrill, CCH Fed.Sec.L.Rep. ¶95,355 at 98,767 (S.D.N.Y. Oct. 31, 1975), a New York court will borrow the limitations law of a foreign state only where (1) the cause of action being sued upon accrued outside of New York, and (2) the plaintiff is not a resident of New York.

Here the second condition is clearly satisfied. Plaintiffs

are, and at all relevant times have been, residents of the State of Washington. While plaintiffs contend that they were "doing business" in New York by reason of the brokerage accounts which they maintained with Blair in New York City, such business activities do not establish New York residence for purposes of the borrowing statute. See American Lumbermens Mut. Cas. Co. of Ill. v. Cochrane, 129 N.Y.S.2d 489 (Sup. Ct.), aff'd without opinion, 284 App.Div. 884, 134 N.Y.S.2d 473 (1st Dept. 1954), aff'd without opinion, 309 N.Y. 1017 (1956) [foreign corporation licensed to do business in state is not a resident within meaning of predecessor borrowing statute].

The first condition creates a more complicated issue. Sack v. Low, supra at 365, holds that New York would follow the rule of the First Restatement of Conflicts, §377, note 4, that "... when a person sustains a loss by fraud, the place of wrong is where the loss is sustained, not where fraudulent representations are made." The Court went on to state that " ... loss from fraud is deemed to be suffered where its economic impact is felt, normally the plaintiff's residence." Id. at 366. Applying this test to the facts of this case, it is clear that the cause of action accrued in the State of Washington because it is there that plaintiffs' pocketbooks are situated.

plaintiffs' point to dictum in Sack v. Low, id. at 368, that it might make some difference "... if the plaintiff maintained an open account at defendant's New York offices and the loss was reflected in that account." They claim that both their stock in Blair and their secured demand notes were held by Blair in New York City and that when the stock declined in value and the collateral securing the note was converted into cash and sold in July 1970 in order to apply the proceeds to pay off the note, any value which they had in their accounts at Blair was wiped out.

However, reading the dictum quoted above in context, it is clear that the Court did not single out the place where the account was maintained as the sole or controlling criterion for determining where the cause of action accrued. The method of payment, and other details were also considered important factors. This issue was mentioned but not actually decided by the Court of Appeals because of the insufficiency of the record on appeal. The Court concluded that while it was unlikely plaintiffs could demonstrate that the cause of action arose in New York under the traditional test, they should not be foreclosed from trying to do so.

This dictum read in context, does not change the result

which flows from the application of the strict test of the First Restatement of Conflicts.

It is sufficient to point out that plaintiffs here executed the promissory notes, and mailed their checks to pay for the stock from Washington, and that they sent at least some of the securities which were to serve as the collateral for the secured demand notes from Washington to New York. And even though the account was liquidated in New York, it cannot be denied that the impact of losing their investment was experienced first and foremost by plaintiffs at their homes in Wenatchee, Washington.[2/]

Thus both prerequisites to applicability of the borrowing statute have been satisfied. A New York court would therefore apply the statute of limitations of the State of Washington, which would be applicable to the claims.

Washington Rev. Code §4.16.080(4) states:

"Actions limited to three years:

* * *

> 4. An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud."

The Ninth Circuit Court of Appeals has held that this Washington statute should be applied to claims for relief under Rule 10b-5. Douglass v. Glenn E. Hinton Investments, Inc., 440 F.2d 912 (9th Cir. 1971); Errion v. Cornell, 326 F.2d 447 (9th Cir. 1956).

If plaintiffs discovered "the facts constituting the fraud" prior to April 11, 1972, counts I-IV would be time-barred.

Plaintiffs allege that certain risk factors were not disclosed to them when they bought securities of Blair in April of 1969. But by the summer of 1970, plaintiffs had apparently discovered that the true financial and operational status of Blair had been concealed from them at the time of their purchase. On July 23, 1970, Mr. Stockwell, acting for himself and as an agent for Mr. Arneil, sent a letter to defendant Ramsey, then President of Blair, asserting that "[t]he extremely critical nature of Blair's problems were not known by us until this time." Furthermore in a handwritten note accompanying this letter, he threatened immediate action if anyone at Blair disposed of the stock securing their notes.

These statements are compelling evidence that at least by the summer of 1970, the plaintiffs knew enough of the basic facts

constituting the alleged fraud to demand rescission of the transaction. Yet in spite of the threat to take immediate action, they did nothing for almost five years after their collateral was converted into cash and sold to pay off the demand note. I conclude that the statutory period began to run at that time and did not await "the leisurely discovery of the full details of the alleged scheme." Klein v. Bower, 421 F.2d 338, 343 (2d Cir. 1970); Berry Petroleum Co. v. Adams & Peck, 518 F.2d 402, 410 (2d Cir. 1975).

There is one final point in connection with the statute of limitations issue, applicable only with respect to the 10b-5 claims against the Stock Exchange. On March 8, 1973, a complaint was filed in the United States District Court for the Northern District of California, Carr v. New York Stock Exchange, No. C-73-0367-SW. Plaintiffs therein sought to maintain a class action on a claim based on exactly the same activities of the Exchange pleaded in this action. The original complaint described the class as former employees of Blair, who had purchased common and preferred stock in Blair and other companies. Since neither Arneil nor Stockwell were ever employees of Blair, this description of the class would have excluded them.

However, on December 17, 1974, in connection with plaintiff's motion for leave to amend his complaint in Carr, the description of the class was expanded to include persons, except officers or directors of Blair or their families, who purchased securities of Blair subsequent to March 8, 1969, and prior to the earliest date, if any, that the omitted material facts were publicly disclosed.

Leave to amend was thereafter granted and on March 28, 1975, an amended complaint was filed containing this description of the class with certain additional exclusions not relevant here. It is clear that the amended description of the proposed class was broad enough to include Arneil and Stockwell. A motion to certify this class was denied on April 30, 1976.

In American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974), after the district court had refused to certify the class because of a failure to satisfy the numerosity requirement, defendants contended that claims of intervenors who would have been in the class had it been certified were barred by the applicable statute of limitations. The Supreme Court, however, held that the filing of a class action "... suspends the applicable statute of limitations as to all

asserted members of the class who would have been parties had the action been permitted to continue as a class."

Arneil and Stockwell contend that the statute of limitations was tolled as to their claims when the original Carr complaint was filed on March 8, 1973. However, at that time they were not asserted members of the class, since its description was then limited to employees of Blair. The earliest point in time at which they would qualify as asserted members would be December 17, 1974, when the proposed amended complaint was filed with a motion for leave to amend. Not until then could it be said that Arneil and Stockwell were relying on the institution of the California action to protect their rights. Since the statute commenced running on July 23, 1970, when the plaintiffs acquired knowledge of the facts constituting the alleged fraud, more than three years had elapsed before they qualified as asserted members of the class. Thus the holding in American Pipe is of no help to plaintiffs. All defendants are therefore entitled to summary judgment on Counts I-IV.

Common Law Fraud (Count XIII).

All defendants are entitled to summary judgment on plaintiffs' claim against them for common law fraud. The same three year Washington statute of limitations is a bar to plaintiffs' recovery on Count XIII.

The §6 Claims (Counts V-XII).

Section 6(a)(1) of the 1934 Act, 15 U.S.C. §78(f)(a)(1), requires that a national securities exchange registered thereunder must agree "to comply, and to enforce so far as is within its powers compliance by its members, with the provisions of [the Act], and any amendment thereto and any rule or regulation made or to be made thereunder."

Baird v. Franklin, 141 F.2d 238 (2d Cir.), cert. denied 323 U.S. 737 (1944), holds that a private cause of action exists against an exchange which breaches its statutory duty to enforce compliance with the Act by its member firms. It would seem that the applicable statute of limitations should be New York CPLR §214(2), which provides for a three year period for actions "to recover upon a liability, penalty or forfeiture created or imposed

by statute." However in Weinberger v. New York Stock Exchange, 335 F.Supp. 139 (S.D.N.Y. 1971), Judge Gurfein held that by the above agreement, the Exchange had entered into a contract with the SEC to supervise its member firms and that plaintiff, a former limited partner in a bankrupt firm, could sue as a third-party beneficiary for breach of that contractual duty. After noting the question had been specifically left open in Baird, Judge Gurfein concluded that a §6 claim should be governed by the limitations period applicable to contract actions and not by the shorter period applicable to actions for breach of a statutory duty.[3/] See also Fischer v. New York Stock Exchange, CCH Fed.Sec.L.Rep. ¶95,416 at 99,108 (S.D.N.Y. Jan. 16, 1976).

I find that plaintiffs' §6 claims (Counts V-XII) are governed by the limitations period applicable to contracts.

The New York statute of limitations should be applied to these claims. Although plaintiffs' third party beneficiaries were residents of Washington, the contract on which they sue was made between the Exchange and the SEC, and presumably was to be performed in New York where the Exchange has its principal place of business. If, as alleged, the New York Stock Exchange breached its contractual

duty to supervise Blair, that breach occurred in New York. Since it cannot be said that the cause of action accrued without the state, the New York borrowing statute is inapplicable. Applying therefore New York CPLR §213(2), which provides a six year limitation period for actions based upon a contractual obligation or liability, it is clear that plaintiffs' §6 claims are not time-barred.

Are There Material Issues of Fact Remaining in Dispute?

A. The §6 Claims (Counts V-XII).

Since these counts are not time-barred, the Exchange can only prevail on its motion for summary judgment if it can show the absence of any genuine issue as to any material fact. On a motion for summary judgment, this Court cannot try issues of fact by affidavits; it can only determine whether there are issues to be tried. This rule enjoys great sanctity in this Circuit. Heyman v. Commerce & Industry Insurance Co., 524 F.2d 1317 (2d Cir. 1975); Judge v. City of Buffalo, 524 F.2d 1321 (2d Cir. 1975); Jaroslawicz v. Seedman, ____ F.2d ____ Dkt. No. 75-7299 (2d Cir. Dec. 19, 1975).

Not all §6 claims are of equal merit. Some may be ripe

for summary judgment because the only issues they raise are frivolous or immaterial, requiring no trial in order to be resolved. Beal v. Lindsay, 468 F.2d 287 (2d Cir. 1972). Into this category fall Counts VI, IX and X which allege violations of §§6(a)(2), (3) and (4). It is clear that these sections impose no contractual duties on the Exchange to enforce its rules but refer only to information which an Exchange must file with the SEC. The Exchange is entitled to summary judgment on Counts VI, IX and X.

In Count XII plaintiffs claim that the Exchange breached its §6 duty by failing to enact adequate rules for the protection of subordinated lenders. They point to the amendment of Rule 313, adding subsection (d) in December of 1971 as evidence that the rules in 1969 were inadequate, in failing to provide for either registration of member securities under the Securities Act of 1933 and/or disclosure of material risk factors.

Plaintiffs' claim here is based on a misreading of Rule 313(d). Before 1970, stock in member firms of the Exchange was not freely transferable in the open market. In 1970 this policy was changed to allow trading in some classes of member-firm

securities. Section 313(d) was enacted in response to this change; that subsection provides that a member organization when issuing a security for purposes of raising capital under Rule 325 (the net capital rule), must furnish to the Exchange an opinion of counsel "as to whether or not the securities being offered or sold need be registered under the 1933 Act ..." and if registration was necessary, a statement that the Prospectus not contain false or misleading statements or omissions of material fact. 2 CCH N.Y.S.E. Guide ¶2313(d) (1971). Its purpose was to insure that funds which member organizations used to satisfy the Exchange's net capital rule would not be subject to claims for rescission for violations of the 1933 Act. Since public offerings of member organization securities were impermissible in 1969, when plaintiffs made their investment, the failure to have a rule such as 313(d) at that time was not a breach of duty under §6.

There is a further point which should be made with respect to Count XII. Whatever theoretical advantages there might be to having the Exchange enforce disclosure with respect to its member's securities, there is ample authority for the

proposition that §6 does not support an action against an exchange for failure to enact such a rule. Rich v. New York Stock Exchange, 329 F.Supp. 1122 (S.D.N.Y. 1974), rev'd. on other grounds, 522 F.2d 153 (2d Cir. 1975); Marbury Management v. Kohn, 373 F.Supp. 140 (S.D.N.Y. 1974); Kroese v. New York Stock Exchange, 227 F.Supp. 519 (S.D.N.Y. 1964). Investors who believe that the Exchange should have better or more stringent rules should apply to the SEC to alter or supplement these rules pursuant to its power under §19(b) of the 1934 Act, 15 U.S.C. §78s(b).

The Exchange is entitled to summary judgment on Count XII.

The only §6 counts which remain to be discussed are V, VII, VIII and XI. Plaintiffs contend in Counts V and VII that the Exchange should have required them to sign "knowledgeability letters" when they made their investment in Blair. In these letters, which were supplied by the Exchange to potential investors in member firms, the individuals would state that they had made an investigation of the firm's position, that they had seen the relevant financial information, that they were familiar with the restrictions, if any, which the Exchange had placed on the firm, and that they were not relying on the firm's status as a member

of the Exchange or the Exchange's surveillance of the firm's capital position.

Plaintiffs claim that in certain situations the Exchange required knowledgeability letters before it would approve an individual as a subordinated lender. These letters helped to point out to investors material risk factors in their decision to lend money to a brokerage firm. Plaintiffs' contention in short is that by failing to require them to sign such a letter in this case, the Exchange breached its duty. As a result plaintiffs assert that they made their investment decision without knowledge of specific risk factors which would have been known to them had the Exchange performed its duty.

The director of the Exchange's Member Firms Department denied that such letters were ever required (Affidavit of Robert M. Bishop, sworn to December 15, 1975, at p. 16). Since nothing in the Exchange rules or the rules of the SEC required knowledgeability letters, the Exchange asserts that there could be no breach of duty under §6. However, the Exchange admitted that in the past it did require such letters in certain situations, and in the Fall of 1968, it had considered whether to require investors in Blair to sign such

letters. Mr. Bishop went on to say that the decision to require them was always made ad hoc and "... under informal standards which developed as time went along." Id.

While it is true that there were no formal rules with respect to knowledgeability letters, if the Exchange undertook to require them in some situations, then it would have a duty to make and carry out these ad hoc decisions consistently and in a manner which would protect investors and accord with just and fair principles of trade.

Whether the Exchange satisfactorily performed this duty is unclear from the present record. The questions as to precisely what these ad hoc standards and practices were at the time plaintiffs made their investments, and how and by whom the decisions were made remain uncertain at this time. These are issues which cannot be resolved by affidavits on this motion.

Since there are unresolved factual issues with respect to these knowledgeability letters, the Exchange's motion for summary judgment on Counts V and VII is denied.

Finally, the Exchange's motion with respect to Counts VII and XI must be denied. By these claims, plaintiffs assert that

the Exchange breached its duty of enforcing compliance with its rules by allowing Schwabacher, a weak firm which was experiencing great difficulties with its back-office operations; had been under investigation both by the Exchange and the SEC; and which had been placed under restrictions, to merge with Blair in March 1969, just before plaintiffs made their investments. Plaintiffs further allege that the Exchange failed to impose timely discipline on Blair once it knew of the serious difficulties facing the firm, and suppressed material information concerning violations of law and the rules of the Exchange.

While the Court agrees with the defendant Exchange that plaintiffs' contention that the Exchange had a statutory duty to prevent violations of its rules is an incorrect statement of the law, both of these Counts do allege a breach of the duty to supervise the activities of Schwabacher, and of Blair. Here the Exchange does not deny that it had notice of improprieties committed by Schwabacher. In fact at the time of the merger, the Exchange was preparing privately to censure Mr. Schwabacher and his firm for numerous violations of the rules.

Having knowledge of these violations, the Exchange had

a duty to take remedial action. Whether its remedy was proper raises issues of fact which cannot be resolved without a full trial.

The import of this discussion is not that the Exchange breached its duty when it approved the merger without foreseeing the difficulties which would and did result for Blair. But there are factual issues concerning the propriety of the merger which plaintiffs should be allowed to litigate. See, Hughes v. Dempsey Tegler, No. 73-351 (9th Cir. March 29, 1976).

Unlike Hochfelder v. Midwest Stock Exchange, 503 F.2d 364 (7th Cir.), cert. denied 419 U.S. 875 (1971) and Butterman v. Walston & Co., 387 F.2d 822 (7th Cir. 1967), cert. denied, 391 U.S. 913 (1968), where summary judgment was granted to the Exchange, there are facts present here which support a possible inference that the Exchange had knowledge of continuing rule violations. The question then becomes: Was the Exchange's response proper in light of all the facts and circumstances which it knew or should have known? This raises issues of fact as to whether the Exchange proceeded with the requisite due care in its regulation and supervision of a member firm. Cf. Evans v. Kerbs & Co., CCH Fed.Sec.L.Rptr.

¶95,459 at 99,324 (S.D.N.Y. March 2, 1976). The propriety of the regulatory actions taken by the Exchange both before and after the merger are at issue here, and summary judgment on Counts VII and XI must therefore be denied.

B. The Fiduciary Duty Count (Count XIV).

Count XIV may also be disposed of on this motion. There plaintiff claims that the Exchange breached a fiduciary duty which it owed to them. However, plaintiffs have cited no authority to support their claim that the Exchange was in a fiduciary relationship with them. In fact, Baird v. Franklin, 141 F.2d 238, 239 (2d Cir. 1944) holds that the Exchange is not in a fiduciary relationship with the public customers of its member firms. Here plaintiffs were public customers of Blair who later became subordinated lenders and shareholders in the firm. Their status is not so different from that of the plaintiffs in Baird. Since there was no fiduciary duty owed to the plaintiffs here, there was no breach. The Exchange is thus entitled to summary judgment on Count XIV.

CONCLUSION

As to the motion of the individual defendants for summary judgment, which is granted in all respects, there is no just cause

for delay, and a final judgment may be settled on notice. Rule 54 (b), F.R.Civ.P.

The Exchange's motion is granted with respect to Counts I, II, III, IV, VI, IX, X, XII, XIII and XIV only, and is in all other respects denied.

So Ordered.

Dated: New York, New York
May 12, 1976

Charles L. Brieant

CHARLES L. BRIEANT
U. S. D. J.

F O O T N O T E S

1. On November 14, 1975 Blair & Co., Inc. obtained a judgment permanently enjoining Arneil and Stockwell from prosecuting this action on the ground that any claims which plaintiffs may have had against Blair were discharged by the Bankruptcy Court's Order of Confirmation, dated October 2, 1973. In re Blair & Co., Inc., 70 B 755 (S.D.N.Y. Nov. 14, 1975).

2. Perhaps correct analysis compels a conclusion that the cause of action accrued both in New York and Washington. If so, then the language of the borrowing statute ("accruing without the state") would still make it applicable to this action. As Judge Friendly stated in Sack v. Low, 478 F.2d at 368, " ... [s]uch a rule avoids the mechanical nature of the single place of arising theory ...." However, since the New York courts have not yet considered this question, the Second Circuit specifically declined to base its decision on that ground. This Court will therefore follow the traditional "single place of arising" analysis and concludes that under the circumstances of this case, that place is the State of Washington.

3. Although the Securities Acts Amendments of 1975, Pub.L. No. 94-29, 89 Stat. 104, June 4, 1975, eliminated any reference

to "an agreement" in §6, these amendments did not become effective until December 1, 1975. In Lank v. New York Stock Exchange, CCH Fed.Sec.L.Rptr. ¶95,395 at 99,012-13, n. 16 (S.D.N.Y. Dec. 29, 1975), Judge Lasker pointed out that these changes may ultimately have some effect on the third-party beneficiary theory of recovery, but could not affect pre-existing rights.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES ARNEIL and VERNON A. STOCKWELL Plaintiffs, v. JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., and THE NEW YORK STOCK EXCHANGE, INC., Defendants.	75 Civ. 1766 (CLB) NOTICE OF APPEAL

Please take notice that plaintiffs JAMES ARNEIL and VERNON A. STOCKWELL hereby appeal to the United States District Court of Appeals for the Second Circuit from the Partial Summary Judgment entered in favor of defendants JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LENDMAN, BLAIR & CO., INC., and THE NEW YORK STOCK EXCHANGE, INC.

Dated: June 18 1976

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JAMES ARNEIL and VERNON A. STOCKWELL,

Plaintiffs,

-against-

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LANDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE,

Defendants.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

CASE NO. 75 Civ. 1766

JUDGE C. L. P IEANT

INDEX TO THE RECORD ON APPEAL	DOCUMENTS
Certified copy of the docket sheet	A-C
Complaint	1
Answer of New York Stock Exchange	2
Notice of Deposition	3
Summons and Return	4
Request for Production	5
Response to Defendants' Request	6
Notice of Motion with Memo endorsed dated 9/4/75	7
Memorandum in Support	8
Affidavit in Opposition	9
Memorandum in Opposition	10
Order Appointing Persons for Service	11
Summons with Service and Returns	12
Answer of Individual Defendants	13
Notice of Deposition	14
Notice of Deposition	15
Notice of Deposition	16
Notice of Motion	17

Memorandum of New York Stock Exchange in Support of Summary Judgment	18
Statement of Material Facts	19
Notice of Motion	20
Memorandum in Opposition	21
Statement of Material Facts	22
Reply Memorandum of Defendant	23
Reply Memorandum	24
Deposition of Ramsey	25
Deposition of Landman	26
Deposition of Vanderbilt	27
Deposition of Stockwell	28
Deposition of Arneil 10/28/75	29
Deposition of Arneil 7/15/75	30
Transcript 1/12/76	31
Memorandum and Order	32
Order and Judgment Bill/Costs	33
Notice of Appeal	34
Clerk's Certificate	35

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES ARNEIL and VERNON A. STOCKWELL,

Plaintiffs,

-against-

JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LANDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE,

Defendants.

CASE NO. 75 Civ. 1766

JUDGE C. L. BRIZANT

NOTICE TO THE DOCKET CLERK

__X__ ORIGINAL RECORD _____ SUPPLEMENTAL RECORD

THE RECORD ON APPEAL IN THE ABOVE-ENTITLED PROCEEDING HAS BEEN CERTIFIED AND TRANSMITTED TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ON THIS 30th DAY OF JULY, 1976.

544

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES ARNEIL and VERNON A. STOCKWELL, Plaintiffs,	
-against-	CASE NO. 75 Civ. 1766
JAMES B. RAMSEY, JR., OLIVER DeG. VANDERBILT, WILLIAM M. LANDMAN, BLAIR & CO., INC., THE NEW YORK STOCK EXCHANGE, Defendants.	JUDGE C. L. BRIEANT CLERK'S CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A-C, and the original filed papers numbered 1 thru 35, and exhibits none, inclusive, constitute the record on appeal in the above-entitled proceeding; except for the following missing documents:

DATE FILED	PROCEEDINGS
none	

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 30th day of July, in the year of our Lord, One thousand nine hundred and seventy six, and of the Independence of the United States the 201st year.

Clerk of the Court

BEST COPY AVAILABLE